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PARLIAMENTARY GOVERNMENT

IN

ENGLAND.

VOLUME THE SECOND.

ON

PARLIAMENTARY GOVERNMENT

IN

ENGLAND:

ITS ORIGIN, DEVELOPMENT, AND PRACTICAL OPERATION.

BY

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LIBRARIAN OF THE HOUSE OF COMMONS OF CANADA.

IN TWO VOLUMES.

VOL. II.

LONDON:
LONGMANS, GREEN, AND CO.
1869.

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TO THE

HON. SIR JOHN A. MACDONALD, K.C.B., M.P.

MINISTER OF JUSTICE AND
FIRST MINISTER OF THE CROWN IN CANADA
&c. &c.

AND

TO THE MEMORY

OF

Thomas D'Arcy M'Gee

STATESMEN

WHO HAVE BEEN PRE-EMINENTLY DISTINGUISHED

FOR THEIR ABLE ADVOCACY OF

BRITISH CONSTITUTIONAL PRINCIPLES IN THE DOMINION OF CANADA

This Volume is Inscribed.

PREFACE.

AFTER AN INTERVAL of two years from the issue of the first part of this treatise, I am at length enabled to lay before the public the concluding volume. The delay has been unavoidable. It was partly owing to the prior claims of official duty, and partly to the variety of topics embraced in the latter portion of the work which demanded the most careful investigation and research.

The publication of the earlier volume was, in fact, undertaken sooner than I had originally contemplated, from a desire to place it in the hands of prominent public men in Canada before the constitution of the new Dominion should be enforced, trusting that it might be helpful in the settlement of various political questions which were likely to arise at that juncture. In order to accomplish this, I was obliged to change the plan of my work, to the detriment, in some measure, of its appropriate order and sequence. The history and development of the king's councils, and the interior working of the Cabinet, ought properly to have followed my exposition of the kingly office; and such had been my first design. But as these chapters were not sufficiently advanced to admit of their insertion in the first volume, I preferred

to omit them from their proper place, rather than postpone the publication. I mention this, as it will explain what might otherwise be regarded as a defect in the work itself. Be this, however, as it may, the additional time afforded for the completion of the work has enabled me to bring down my narrative of constitutional history and practice to the present day, when we are about to enter upon a new and important era in our political history.

As I have associated the name of the late Thomas D'Arcy M^c^Gee, in the dedication of this volume, with that of one of the most eminent statesmen now living in Canada, I may be permitted to mention that by his lamented and untimely decease I have lost a friend who took the warmest interest in the progress of this work from its very commencement, and who welcomed the publication of the previous volume by a most kindly notice in a London journal.[a] After a large experience in political life, at the beginning of which he evinced a decided preference for a republican form of government, Mr. M^c^Gee acquired, in maturer years, a profound admiration for the British Constitution. With the enthusiasm of his poetical temperament, as well as with the sagacity of a practical statesman, he loved to speak of its great and varied excellences, and especially to dwell upon the benefits resulting from the monarchical principle as the true foundation of all stable government. Had he lived, it was his purpose to have delivered a course of lectures thereon in the chief towns of Canada. I should have gladly assisted him in this good work, to the best of my

[a] See his letter, signed M. P. P., in the *Canadian News* of March 14, 1867.

ability; and now that he is gone, I feel that I cannot better contribute to the fulfilment of his patriotic intention than by inviting the consideration of political students in this Dominion to the governmental institutions of the mother country, as described in these volumes, which claim to present fuller information upon that subject than is obtainable elsewhere.

For the same reason, I venture to hope that my work may be of service to public men in England, inasmuch as, whatever may be its defects or omissions, it is the first attempt that has been ever made to collect and embody, in a systematic form, the laws, usages, and traditions of parliamentary government.

ALPHEUS TODD.

LIBRARY OF PARLIAMENT, OTTAWA, CANADA:
February 1869.

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ON

PARLIAMENTARY GOVERNMENT

IN

ENGLAND.

CHAPTER I.

THE COUNCILS OF THE CROWN, UNDER PREROGATIVE GOVERNMENT.

Origin of our national polity.

THE ORIGIN of the political institutions of modern England must be sought for in the governmental system of our Anglo-Saxon progenitors. Meagre and imperfect as is our information on this subject, enough is known of the leading principles of Anglo-Saxon government to show that in them were to be found the rudiments of the institutions which we now enjoy.

The precise features of the polity of England before the Norman Conquest, although they have given rise to much learned enquiry, are still, to a considerable extent, conjectural. But the researches of Sir Francis Palgrave[a] and of Mr. Kemble,[b] supplemented and corrected by the more recent investigations of Mr. E. A. Freeman,[c] have been of

[a] Rise and Progress of the English Commonwealth, 2 vols. 4to. 1832.

[b] The Saxons in England; a History of the English Commonwealth till the period of the Norman Conquest, 2 vols. 8vo. 1849.

[c] History of the Norman Conquest, vol. i. Preliminary History to the Election of Edward the Confessor (1867).

inestimable service in elucidating much that was previously obscure in this branch of historical enquiry. The student of political history will find in their works ample materials to aid him in forming an intelligent idea of the fundamental laws and established institutions of this country in the earliest days of our national life. And these writers are all agreed in testifying that, however striking may be the contrast, in many points of detail, between the primitive form of government in the time of our Anglo-Saxon forefathers and that which now prevails, 'the germs alike of the monarchic, the aristocratic, and the democratic branches of our constitution will be found as far back as history or tradition throws any light on the institutions of our race.'[d]

Anglo-Saxon Government.

In common with other tribes of similar Teutonic origin, the Saxons in England, from a very early period, were ruled over by kings, whose power was not arbitrary and despotic, but was subjected to certain well-defined limitations, by the supreme controlling authority of the law.

The king.

The dignity, authority, and power of the chief ruler in England was gradually developed from that of an ealdorman (who combined in his own person the functions of a civil ruler and of a military chieftain) into that of a king—a change that is not peculiar to our own land, but which marked the progress of political society elsewhere, in countries inhabited by the Teutons and other kindred peoples.[e]

The transition from ealdorman to king brought with it an accession of power to the ruler. As the territory over which his headship was recognised expanded, his royal dignity and importance increased.

The early Teutonic constitution, when transplanted into English soil, was, like that of many of the small states of the Old World, essentially free. It consisted of a supreme leader, with or without royal title, an aristocratic council,

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[d] Freeman, vol. i. p. 75.

[e] *Ibid.* pp. 76-81.

composed of men of noble birth, and a general assembly of freemen, in whom the ultimate sovereignty resided.[f] By degrees, however, the primitive democracy of the ancient Teutonic communities gave place to the rising influence of the *comitatus*, or personal following of the chiefs. And in proportion as the kings of England advanced in strength and dominion they naturally acquired a more complete supremacy over their comitatus. The thanes, or body-servants of the king, were gradually invested with rank and power in the kingdom. Thus there arose a new kind of nobility, *virtute officii*, which at length obtained precedence over the elder hereditary nobles.[g] The nobles.

Other elements combined to magnify the authority of the chief ruler: such as the growth of feudalism—under which lands were held by the tenure of military service due from the vassal to his lord—and the control assumed by the king over the lands of the nation. At first the 'folkland' could only be alienated by the king, with the consent of his Witan. But after the Norman Conquest, the folkland was called the *terra regis*, or king's land, when the king claimed the right of granting it at his own pleasure, and without the sanction of Parliament.[h]

But the power of the crown was, from the first, subjected to the control of the Witenagemot, or 'Meeting of the Wise Men,' which appears to have formed part of the national polity of the Teutons, from their earliest appearance in history, and was introduced by them into the Saxon commonwealth.[i] Originally a democratic assembly, Freeman describes the process by which this popular council, without the formal exclusion of any class of its members, gradually assumed an aristocratic aspect,[j] without losing any of its essential powers. Under the Heptarchy, every separate king in England had his own Witenagemot; but after the other kingdoms were merged The Witenagemot.

[f] Freeman, vol. i. pp. 86-90.
[g] *Ibid.* pp. 91-97.
[h] *Ibid.* pp. 97-102.
[i] Kemble, vol. ii. pp. 185-195.
[j] Freeman, vol. i. pp. 106-110.

into that of Wessex, their respective Witans became entitled to seats in the Gémot of Wessex, as being the common Gémot of the realm.

The Witans.

Our knowledge as to the constitution of these great councils, in any English kingdom, is extremely vague and scanty. But we have proof that the great officers of the court and of the kingdom were invariably present in the Witenagemot, together with ealdormen, bishops, abbots, and many other of the king's thanes. There was also an infusion of the popular element, by the attendance of certain classes of freemen, though to what extent and in what manner this took place cannot be positively determined.[k]

But, howsoever composed, it is undoubtedly true that the Witenagemot was an institution which afforded to the English nation a remarkable amount of liberty and protection.

The powers of the Witenagemot have been defined, by Kemble, as follows:—'1. First, and in general, they possessed a consultative voice, and right to consider every public act which could be authorised by the king. 2. They deliberated upon the making of new laws which were to be added to the existing folcriht, and which were then promulgated by their own and the king's authority. 3. They had the power of making alliances and treaties of peace, and of settling their terms. 4. They had the power (subject to the restriction hereinafter mentioned) of electing their king. 5. They had the power to depose the king, if his government was not conducted for the benefit of the people. 6. They had the power, conjointly

[k] Kemble, vol. ii. p. 237. And see the First Report of the Lords' Committee appointed to search the Journals of the House of Lords, Rolls of Parliament, &c., for all matters touching the Dignity of a Peer of the Realm, p. 17. Learned and elaborate reports were presented to the House by this Committee in the years 1819 to 1825, which were reprinted in 1829. The First Report, from which alone our citations are made, treats of the constitution of the legislative assemblies of England, from the Conquest to the legislative unions with Scotland and Ireland. It will be found in the Lords' Papers for 1829, No. 117. It is cited in this chapter, as First Lords' Report.

with the king, of appointing prelates to vacant sees. 7. They had power to regulate ecclesiastical matters, appoint fasts and festivals, and decide upon the levy and expenditure of ecclesiastical revenue. 8. The king and his Witan had power to levy taxes for the public service. 9. The king and his Witan had power to raise land and sea forces, when occasion demanded. 10. The Witan had power to recommend, assent to, and guarantee grants of land, and to permit the conversion of folcland into bócland, and *vice versâ*. 11. They had power to adjudge the lands of offenders and intestates to be forfeit to the king. 12. Lastly, the Witan acted as a supreme court of justice, both in civil and criminal causes.'[1] All these instances of the powers exercised by the Witenagemot are illustrated, in Mr. Kemble's narrative, by numerous examples, taken from the records and chronicles of the period.

The kingly office.

In asserting that the king was elected by the Witan, and was subject to be deposed by their authority, it must not be inferred that the Anglo-Saxon state was, either in spirit or in form, an elective monarchy, in the modern acceptation of the term. In every Teutonic kingdom there was a royal family, out of which alone, under all ordinary circumstances, kings were chosen; but within that royal family the Witan of the land were privileged to exercise choice. The eldest son of the last king was considered as having a preferential right; but if he were too young, or were otherwise objectionable, some other and more capable member of the royal family would be chosen instead. Again, the recommendation of the king himself as to his successor on the throne had great weight, and was usually respected. On every occasion, indeed, the right to the kingly office must be substantiated and confirmed by a competent tribunal. But in so doing the members of the great council 'are not national representatives, offering the empire to a candidate whom their voices have raised to authority; but they are the "Witan,"

[1] Kemble, vol. ii. pp. 204-232.

the judges, whose wisdom is to satisfy the people that their allegiance is demanded by their lawful sovereign.' 'Though we cannot adopt the theory that the Anglo-Saxon empire was elective, we arrive, however, at the conclusion that it was governed by law. The Constitution required that the right of the sovereign should be sanctioned by a competent tribunal.' Thus, 'the inchoate title of the sovereign was confirmed by the national assent, and his claim was to be recognised by the legislature. In this sense,' says Sir Francis Palgrave, 'the king was said to be elected by the people.'[m]

In like manner, the extreme right of deposing their sovereign, which the law assigned to the Witan, was one that was obviously to be resorted to only in cases of emergency, when the conduct of the reigning monarch had made him intolerable to the people. The exercise of this power by the Witan was an event of very rare occurrence, but examples are to be found, both before and after the Norman Conquest, of the deposition of kings by Act of Parliament.[n]

Powers of the Witan.

From this it will be seen that the powers of the Witenagemot far exceeded those assigned by law to modern legislative bodies, or exercised, in conformity with constitutional practice, by the House of Commons at the present day. 'Every act of government of any importance was done, not by the king alone, but by the king and his Witan.' The Witan had a right to share, not merely in ordinary acts of legislation, but even in matters of prerogative and administration which are now considered as exclusively appertaining to the crown.[o] It might reasonably be anticipated that such a polity would unavoidably give rise to frequent collisions between the king and his parliament, and such undoubtedly was the case after the Norman Conquest, when the power of

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[m] English Commonwealth, vol. i. pp. 558-562; Kemble, vol. ii. p. 214; Freeman, vol. i. p. 117.

[n] Kemble, vol. ii. p. 219; Freeman, vol. i. p. 113.

[o] Freeman, vol. i. pp. 113, 120.

the sovereign had assumed more formidable dimensions, at variance with the ancient principles of English liberty.[p] But the Saxon Witenagemot appears to have co-operated more harmoniously with the king than similar assemblies of a later date. This may be accounted for by the fact that 'it was not a body external to the king, but a body of which the king was the head in a much more direct sense than he could be said to be the head of a later mediæval parliament. The king and his Witan acted together; the king could do nothing without the Witan, and the Witan could do nothing without the king; they were no external half hostile body, but his own council surrounding and advising him.'[q] Under such circumstances, it is natural that this influential body should have been privileged to interpose, with authority, in the conduct of public affairs.

Royal authority.

The mutual interdependence between the sovereign and his council at this period of our history must not lead us to infer that a Saxon monarch was a mere instrument for carrying out the resolves of his councillors.

The king of England, in those days, was the acknowledged head of his people—the lord to whom all the nobles of the land owed fealty and service. He was the fountain of honour, and the dispenser of the national wealth. He appointed the time and place for meetings of the Witan, and laid before them whatever matters required their advice or consent, exercising over their deliberations the influence which properly belonged to his exalted station and personal character. If weak, vacillating, or unworthy, his powers would necessarily be impaired, and it would be the province of the Witan to restrain him from acts of misgovernment, and to demand security for the due administration of the royal functions. Strictly limited by law in the exercise of his prerogatives, the personal authority of an ancient English

[p] Freeman, vol. i. p. 121.

[q] *Ibid.* p. 122.

sovereign, if at all worthy of his position, was wellnigh unbounded.[r]

The power of the Crown.

After the triumph of the Norman arms, on October 16, 1066, at the battle of Hastings, the crown of England was transferred to William the Conqueror by a forced election of the English Witan.[s] During the reign of this sovereign, and of his immediate successors, the character of the monarchy underwent a gradual change, but far more through the spirit in which the government was administered than by any direct action of the legislature. For William I. claimed to be the lawful successor of the Saxon kings. Inheriting their rights, he professed to govern according to their laws.[t] But with the new

[r] Freeman, vol. i. pp. 123–126, 163; Kemble, vol. ii. p. 232; Palgrave, vol. i. p. 657.

[s] 'Knight, Popular Hist.' of Eng. vol. i. p. 185; Freeman, vol. i. p. 163. The form of an election continued to be observed, as a general rule, until the accession of Edward I., when the maxim began to be established, that immediately on the death of the king, the right of the crown is vested in his heir, who commences his reign from that moment (Allen, Royal Prerogative, pp. 44–47). Nevertheless, in the ceremonial observed at the coronation of the successive kings of England, to that of Henry VIII. inclusive, there continued to be used forms wherein the recognition, will, and consent of the people are distinctly asked, and the kings were declared to be 'elect and chosen' (Chapters on Coronations, London, 1838, pp. 99, 103). But in the reign of Henry VIII. Parliament definitely determined the succession of the crown to be in Edward, Mary, and Elizabeth; and in default of issue from them, even empowered the king to bequeath the crown to whomsoever he would, provided only that his choice should be made known, 'as well to the lords spiritual and temporal, as to all other his loving and obedient subjects, to the intent that their assent and consent might appear to concur therein' (25 Hen. VIII. c. 22; 28 Hen. VIII. c. 7; 35 Hen. VIII. c. 1). Afterwards, Queen Elizabeth's title to the crown was formally recognised by Parliament (1 Eliz. c. 3). And upon her decease, without issue, Parliament acknowledged that the English crown 'did, by inherent birthright and lawful and undoubted succession,' descend to James I., as 'the next and sole heir of the blood-royal of this realm' (2 James I. c. 1). Upon the abdication of James II., Parliament conferred the crown upon William and Mary, and afterwards regulated the succession in the Protestant line of the descendants of James I. (1 W. and M. sess. 2, c. 2; 12 & 13 Will. III. c. 2.)

[t] Freeman, vol. i. pp. 2, 4, 163. The laws known as those of Edward the Confessor were so called because they were solemnly ratified by him, 'as the condition and price of his restoration to the throne of his ancestors.' They were chiefly those contained in the comprehensive statutes which Canute, king of all England, enacted at Winchester, by the advice of his Witan, in the years 1017 and 1033.' (Palgrave, vol. i. p. 48.)

dynasty there came in a new nobility devoted to their Norman lord, who gradually displaced the nobles of the land in offices of rule, and obtained possession of their estates. Thus the power of the crown steadily increased, and the authority of the national councils was proportionably impaired. 'The idea of a nation and its chief, of a king and his councillors, almost died away; the king became half despot, half mere feudal lord. England was never without national assemblies of some kind or other; but, from the Conquest in the eleventh century till the second burst of freedom in the thirteenth, they do not stand out in the same distinct and palpable shape in which they do both in earlier and later times.'[u] Nevertheless, the liberties of their Saxon forefathers were always fresh in the recollection of successive generations of Englishmen, until, by slow degrees and after many struggles, they succeeded in recovering them—not indeed in their original shape, but in a form better adapted for the altered condition of the commonwealth.

The Saxon polity.

The picture of the political constitution of England under her Saxon kings, which we have sketched from the pages of the learned writers who have elaborately investigated the subject, is replete with interest and instruction. In a primitive state of society, and amongst a simple loyal-hearted people, such a form of government was admirably adapted to their wants. By it freedom was maintained, life and property protected, and the national welfare advanced. But it may be doubted whether a system suited for such a time would have stood the test of stormier days, or sufficed to give adequate protection to the king and to his councillors under less favourable circumstances. Difficult problems in the art of government require the experience of centuries to solve them aright. The proper relations between the sovereign and his immediate advisers, the position which both should occupy towards the national legislature, the true sphere

[u] Freeman, vol. i. p. 122.

and appropriate functions of Parliament, are all of them questions of the highest importance to the national welfare. And as we proceed with our narrative, we shall find every one of these questions arising, and obtaining, in their turn, a suitable solution. Unconsciously, and ofttimes without apparent sequence, the efforts of each succeeding generation have been overruled to bring about the final issue. The vigour with which at one period the authority of the crown has been asserted, and the wider influence and more independent action claimed for the councils of the crown at another, have both alike contributed to the formation of our present system. And, happily for England, each new development as it arose was a result of the law of growth, and not the effect of revolution, and is clearly traceable to constitutional principles which existed in the germ in the ancient Saxon polity.[v]

Advisers of the Crown.

From the first introduction of monarchical institutions into Britain, the sovereign has always been surrounded by a select band of confidential counsellors, appointed by himself, to advise and assist him in the government of the realm.[w] It may be confidently asserted that there is no period of our history when the sovereign could, according to the law and constitution, act without advice in the public concerns of the kingdom.[x] 'That the institution of the Crown of England has always had a Privy Council inseparable from it, is a fact which ought never to be lost sight of. This council has always been bound to advise the crown in every branch and act of its excutive conduct.'[y] And it is, in fact, the only council, combining in itself both deliberative and administrative functions, which is authoritatively recognised by the law

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[v] See Macaulay, History of England, vol. i. p. 25.

[w] Palgrave, vol. i. p. 325; vol. ii. p. cccxlviii.

[x] Hearn, Government of England, p. 18; Mr. Adams's speech, Parl. Deb. vol. xvi. p. 2****; Courtenay, Life of Sir Wm. Temple, vol. ii. p. 57.

[y] Smith, Parly. Remembrancer (1862), p. 3.

and constitution of England. The number of members composing this council has varied at different periods, according to the king's will, 'but of ancient time there were twelve, or thereabouts.'[z]

The particular designation of privy councillor belongs to a later age, but the institution itself is coeval with the monarchy. It is evident that the Norman sovereigns, as well as their Anglo-Saxon predecessors, were advised, in the exercise of their prerogative, by a select council, nominated by the king and regularly attendant upon him, which was distinct from the great council of the nation, though included in every assembly thereof.[a]

A.D. 1066. The king's councils.

At the era of the Norman Conquest there appears to have been three separate councils in existence: one, composed of nobles, who were assembled on special occasions, by special writs, and who, together with the great officers and ministers of state, formed the *magnum concilium*; another, styled the *commune concilium*, or general parliament of the realm. These two councils were mainly identical in their general character and relations towards the sovereign. Their chief distinction seems to have been in the greater care shown in summoning the members of the *commune concilium*, to advise the king in more general matters, and especially when grants of money were required. The third council was known as the *concilium privatum assiduum ordinarium*, or, more frequently, the king's council. It comprised certain select persons of the nobility and great officers of state, specially summoned thereunto by the king's command, and sworn, and 'with whom the king usually adviseth in matters of state and government.' This council—or probably a committee of it, consisting of the judges, presided over by the king, or (in his absence) the chief justiciary—served also as the supreme court of justice, which, under the denomination of the *curia regis*, commonly assembled

[z] Coke, Fourth Inst., p. 53.
[a] Palgrave, on the King's Council, p. 20; Kemble, vol. ii. p. 188.

three times in every year, wherever the king held his court.[b] The king's 'ordinary' or 'continual' council was equivalent to that which was known, in later times, as the Privy Council.[c] But, apart from the fact that one was temporary and occasional, and the other permanent, there seems at first to have been but little difference between this body and the other principal councils. Leading nobles were members of the 'continual' council, and at meetings of the great council they naturally occupied a prominent place, either as members or assistants of that august assembly.

Ordinary council.

The permanent council under the early Norman kings consisted of the great officers of state—namely, the chancellor, the great justiciary, the lord treasurer, the lord steward, the chamberlain, the earl marshal, the constable, —and any other persons whom the king chose to appoint. It also included the archbishops of Canterbury and of York, who claimed the right to form part of every royal council, whether public or private. Besides these persons, there were occasionally present, the comptroller of the household, the chancellor of the exchequer, the judges, the king's serjeant, &c. This body was then known as the *curia regis*, otherwise styled the *aula regia*, or court of the king, and its powers were immense and undefinable. Its duty was to assist the king in the exercise of his royal prerogatives, and to give its sanction to acts done by him in virtue of those prerogatives—the members thereby making themselves responsible for the acts of the king.[d] Thus, it was the executive. It acted also

[b] Hale, Jurisdiction of House of Lords, pp. 5-9; First Lords' Report, pp. 20-23.

[c] Macqueen says (pp. 673, 674) that 'it was by a distribution of its business to subordinate committees that the functions of the Privy Council, in all ages, were performed.' The legal committee, above mentioned, afterwards developed into a separate 'council learned in the law,' of which the only remains left at the present day is in the titular distinction of Queen's Counsel, accorded to leading members of the legal profession (see Hearn, Govt. of Eng. pp. 295–297), while the functions of this body are now fulfilled by the Judicial Committee of the Privy Council. (See *post*, p. 625.)

[d] First Lords' Report, p. 21.

as a court of law. It took part in acts of legislation. In fact, 'the king, who was at once the ruler and judge of the whole nation, exercised the powers which he possessed, either directly (and this he did to a greater extent than modern students are apt to suppose) or indirectly, through the instrumentality of his great officers.' For in considering 'the interchange of advice between the king and his nobles' during this period, we must divest ourselves of modern notions of constitutional authority, and understand that, 'according to the ideas prevailing in the eleventh century, it was rather the king's privilege than his duty to receive counsel from the great men of his kingdom. Their recommendations were not, like the advice of modern parliaments or ministers, commands veiled under a polite name, but in the strictest sense counsel;'[e] nevertheless, there were certain things which the king was never able to accomplish by his mere prerogative. Thus, he could neither legislate, nor impose new taxes, without the consent of his Parliament. And he was bound to rule in accordance with the laws of the realm; and if he broke those laws, his agents or advisers were, from a very early period, in some shape or other, held accountable for his misdeeds to the national assembly.[f] Moreover, it was the right and duty of the king to demand and receive advice from his great council under all circumstances of difficulty; a safeguard which the nation always jealously maintained, even though the supreme will of the monarch should be afterwards enforced, in accordance with his acknowledged prerogative. Always remembering, however, that the king of A.D. 1250. England was never an absolute monarch, but was himself

[e] The Privy Council: the Arnold Prize Essay, 1860. By A. V. Dicey, B.A. pp. 3–6.—This able essay presents, in a popular form, the results of the researches of Sir Harris Nicolas, in his learned prefaces to the 'Proceedings and Ordinances of the Privy Council of England,' from 10 Richard II. (1386) to 33 Henry VIII. (1542). I have been much indebted to both these works for my sketch of the history of the Privy Council under prerogative government.

[f] Macaulay, Hist. of England, vol. i. pp. 29–32.

subject to the law. Bracton, writing in the thirteenth century, says that it is 'the law by which he is made king, . . so that if he were without a bridle, that is, the law, his great court ought to put a bridle upon him.'[g] For though the king is our sovereign lord, he does not possess the sovereign authority of the commonwealth, which is vested, not in the king singly, but in the king, lords, and commons jointly.[h] To enable him to govern his people with wisdom and discretion, the king would summon to his councils 'the most considerable persons in England, the persons he most wanted to advise him, and the persons whose tempers he was most anxious to ascertain.'[i]

In process of time the character of the *aula regia* underwent considerable modification. Each individual officer of the court had his own particular duties assigned to him. All business brought before the court would naturally be referred by the king to the functionary specially charged with the same. Thus, the marshal or constable, assisted probably by other members of the court, attended to military matters; the chamberlain to financial concerns; the chancellor to questions affecting the royal grants. Hence arose, by degrees, the separate institution of *curia regis*, under Henry II.—as an offshoot from the larger body—into a distinct judicial tribunal, which is the original of the present Court of Queen's Bench,[j] and the subsequent development, at a later period, of other courts of law and equity.

A.D. 1199. Law Courts.

The first establishment of the law-courts, as distinct tribunals, took place, however, in the reign of King John. But it is worthy of notice that, notwithstanding the formation of separate courts for the administration of justice,

[g] Quoted by Forster, Debates on Grand Remonstrance, p. 28. And see *ante*, vol. i. p. 168.

[h] Allen, Royal Prerogative, p. 159; First Lords' Report, p. 22.

[i] Bagehot, Eng. Const. Fortnightly Review, Jan. 7, 1867, p. 80.

[j] Chron. of Reigns of Hen. II. and Richard I. edited by Stubbs, vol. ii. pp. lxxi.-lxxx.; and see Hearn, Govt. of Eng. pp. 266-271.

the king's council continued to exercise judicial authority. To be the source and dispenser of justice, and to supply the defects and moderate the judgments of inferior courts, is an ancient prerogative of the crown.[k] This prerogative was ordinarily exercised through judges, in accordance with established precedent; but it was still regarded as within the power of the king to try suits, either by his own authority, or through the officers of his council.[l]

With the accession of Edward I. still more important changes commenced. The contemporaries of the Conqueror and his immediate descendants had been accustomed to the exercise of justice by the king and his great officers, after a rude and informal fashion. Meanwhile, the ordinary councils of King John and of Henry III. were largely influenced by the growing power of the barons, which operated as a restraint upon the arbitrary power of the sovereign. But when Edward I. assumed the throne, a better understanding began to prevail between the monarch and his advisers.[m] The rise of the law-courts out of the *curia regis* begat, in the people generally, a desire for more orderly government. Those who contrasted the regular administration of justice with the irresponsible and uncertain procedure before the king's council, longed for something more in accordance with their ancient Saxon liberties.[n] For the functions of the ordinary council at this time seem to have been coextensive with the functions of the crown. Its consent appears to have been deemed necessary to every important act of the king in the exercise of his legislative as well as of his executive powers. It 'was evidently then considered as a very important part of the government, responsible to the king and the country for the acts done under its sanction; and the people often took great interest in its

A.D. 1272.

Ordinary council.

[k] See Palgrave, Eng. Commonwealth, vol. i. p. 283.

[l] Dicey, p. 8.

[m] Palgrave, King's Council, p. 19.

[n] Dicey, p. 11.

proper formation, of which there are striking instances in the reigns of Henry III. and Edward II.'[o]

Great council.

Contemporaneously with these events, the 'great council' was steadily undergoing transformation, and assuming definite shape as a legislative body, with acknowledged rights and privileges. Formerly, as we have seen, the great council did not differ very materially from the smaller and more confidential assembly. The functions of both were chiefly administrative. The councils of William I. and his immediate successors, so far as existing records shew, were principally occupied with matters of executive government—such as the grant of local charters, and the settlement of titles to land.[p] The king could do nearly everything in his 'ordinary council' that was lawful for the great council to effect, except impose taxes. William the Conqueror, in ascending the throne of England, had expressly renounced all right to tax the nation without the consent of the *commune concilium regni*; and had promised to govern by the old laws, except as they might be altered expressly for the general good.[q] It is true that he had not been faithful to his word. But every formal concession on the part of the crown contributed somewhat to the growth and establishment of the great national council upon a firmer basis. And the continual and ever-increasing necessities of the state compelled the Norman sovereigns to yield, however reluctantly, new charters, with extended privileges, to their powerful but insubordinate nobility. Thus the lawless barons won for a down-trodden and spiritless people precious franchises, that in due time should elevate the national character, and 'so balance the forces existing in the state as to give to each its opportunity of legitimate development.'[r]

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[o] First Lords' Report, p. 451; Hearn, Govt. of Eng. p. 273.

[p] Cox, Antient Parly. Elections, p. 61.

[q] Taylor, Book of Rights, p. 9.

[r] Professor Stubbs's Preface to the Chronicle of Benedict of Peterborough (Rolls Chronicles, published in 1867), vol. ii. p. xxxvii.

The sagacious policy of Henry II., during his long and eventful reign, did much to prepare the way for these changes in the framework of English government. Though bent upon consolidating the kingly power, Henry II., when not absent from the realm, took frequent occasion to convene the old national assembly, and to ask the counsel of his constitutional advisers upon every possible subject. In fact, many matters were freely discussed at these councils which would be deemed unsuitable for the consideration of Parliament at the present day. But the advice sought for and received, in conformity with ancient usage, did not debar the sovereign from the right to act as his own judgment might dictate upon the particular question.[s]

A.D. 1155–1180.

The king and his council.

From the grant of Magna Charta by King John, confirmed and supplemented by similar concessions obtained from later monarchs, may be dated the rise of our representative system,[t] the recognition of the House of Commons as a separate estate of the realm, and the establishment upon a sure foundation of our national liberties.

June 15, 1215.

Rise of our representative system.

The precise period when the representative system of England originated, and the circumstances that gave it birth, are points which, notwithstanding the laborious investigations of constitutional writers, are still involved in great obscurity. The learned authors of the Report of the Lords' Committee, however, arrived at the following conclusions upon this subject. They are of opinion that from the Conquest until the reign of John, prelates, earls, and barons generally formed, under the king, the legislative power of the realm, for all purposes except the imposition of taxes; although the advice of an inferior class in the community, or of particular individuals not of the privileged orders, would be occasionally asked

[s] Prof. Stubbs's Pref. to the Chron. of Benedict of Peterborough (Rolls Chron. 1867) vol. ii. pp. cx.–cxix.—This learned preface gives an admirable account of the constitutional history of the period.

[t] For interesting particulars of the origin and early history of Political Representation, see Hearn, Govt. of Eng. ch. xvii.; and Forster, Grand Remonstrance, pp. 31-41.

Origin of representation.

by the king, under exceptional circumstances, as for the purpose of giving validity to the grant of an extraordinary aid to the crown. But it cannot be shown that, at this time, any commoners, elected by the people, or otherwise, were called to the great councils, or Parliaments, as members thereof.[u] That the great council of the realm summoned by John, as appears from the Great Charter, included certain persons who were summoned thereto by virtue of their holding lands in chief of the crown. That some of these individuals gave their personal attendance, others possibly appeared by representation, inasmuch as the lesser barons, being under no peculiar obligation of personal attendance, would naturally incline to select certain of their richest and most influential brethren to represent them. That during the reign of Henry III., important changes probably took place in the constitution of the great council, and most likely, as the result of circumstances, without the intervention of any express law on the subject. That in the 49th year of Henry III., through the instrumentality of Simon de

A.D. 1265.

Montfort, Earl of Leicester, a great council was convened, which consisted not only of persons who were summoned personally, by special writ, according to the charter of John, but of persons who were required to attend, not merely by general summons, according to the same charter, but in consequence of writs directed to the sheriffs of certain counties, and to certain cities and boroughs, commanding the recipients to cause 'knights, citizens, and burgesses' to be chosen as representatives of such counties, cities, and boroughs respectively, who should attend the king's council, together with those who had been personally summoned thereto.[v] That the first clear evi-

[u] See Parry's Parlts. Introd. pp. xii–xvi. Cox, Antient Parly. Elections, pp. 64–70.

[v] Historians and antiquarians are agreed in referring to the year 1265, the earliest Parliament of lords, knights, citizens, and burgesses. Before that time, indeed, there had been held many great councils of the nation, but none, so far as extant records show, in which the counties and boroughs of England were represented together. (Cox, Antient Parly. Elections, p. 60.)

dence remaining of any subsequent convention of a legislative assembly, under similar circumstances, was in respect to the Parliament summoned in the 23rd year of Edward I.; while the constitution of the intervening assemblies is wrapped in uncertainty. That from thence until the 15th year of Edward II., the legislative assemblies of England appear to have been generally, but not invariably, composed nearly in the manner in which the assembly in the 23rd of Edward I. was constituted. That the declaratory statute of the 15th of Edward II. gave the sanction of Parliament to the constitution of the legislature as it then stood, under which the legislative power was declared to be in the king, 'by the assent of the prelates, earls and barons, and commonalty of the realm, according as it had been heretofore accustomed.' And that, after this period, the constitution of the legislative assemblies of England had nearly approached the form which it now presents.[w] A.D. 1295. A.D. 1322.

Whilst the appropriate functions of the several orders and estates of the realm were thus being gradually developed and matured, the divers elements of which the nation itself was composed were uniting together. In the reign of Edward I., the protracted struggle between Englishmen, of whatever race descended, and the foreigners who had devoured their substance and overthrown their liberties, came to an end. By the efforts of this prudent monarch, the English and the Normans were joined together in a common bond of mutual helpfulness, ancient freedom was revived, and the national institutions began to assume 'those constitutional forms which, with mere changes of detail, they have preserved uninterruptedly ever since.'[x] A.D. 1272–1307.

It was during the reign of Edward I. that the barons,

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[w] First Lords' Report, pp. 154, 254, 389–391, 473. And see May, Parl. Prac. (ed. 1859), pp. 19–23. Cox, Ant. Parl. Elections, pp. 68–85 and 96.

[x] Freeman, vol. i. pp. 6, 122; and see Knight, Pop. Hist. of Eng. vol. i. p. 385.

who had hitherto monopolised the ear of the sovereign, and controlled his policy, became conscious of the existence of a new power which it was needful for them to conciliate. The citizens and burgesses, who had accumulated wealth by honest industry, and who were able and willing to contribute to the necessities of the state, were altogether excluded from the national councils. Whether or not this was esteemed a grievance, at this period, it is hard to conjecture: this much at any rate is certain, that they stoutly objected to pay any taxes that were levied upon them without their consent. In 1297, after a fruitless endeavour, on the part of the king, to exact the levy of a rate on the 'communaute' of the kingdom, which they had not agreed to pay, several of the principal peers interposed on their behalf, and obtained a guarantee from the king that no such illegal taxation should be again attempted. Shortly afterwards, the king convened a parliament, wherein this fundamental principle of English liberty was solemnly ratified, by the statute *De Tallagio non concedendo*, which provides that 'no talliage or aid shall by us or our heirs be imposed or levied in our kingdom without the will and assent of the archbishops, bishops, barons, milites, burgesses, and the other freemen of our realm.'[y]

Once they obtained an entrance into the great council, the lesser orders speedily began to acquire influence and authority. The growth of the power of the commons is distinctly traceable in the records of the legislative assembly under Edward II. In the preceding reign, in conformity with the usages of an earlier period, the functions of the commons were limited to a declaration of the extent of the grants which they were empowered by their
A.D. 1307. constituents to offer to the crown. But in the time of Edward II. the right of the commons to a share in the

[y] Cox, Ant. Parl. Elections, pp. 71, 77–79; and see *ante*, vol. i. p. 453.

making of laws was formally acknowledged; and by the latter part of the reign of Edward III., the power of the commons had so greatly increased that we find them strenuously resisting attempts to impose inordinate taxation, and boldly remonstrating with the king upon his choice of unworthy advisers.[a] Rising power of the commons.

About this period, there was a further development of the power of the commons, in relation to the mode of granting aids and supplies to the crown. In the reigns of Edward I., II., and III., it had been customary for the lords, the clergy and the commons, severally and separately, to determine the proportion of their respective grants, on the principle that they each represented distinct and independent portions of the community.[a] Nevertheless, it was obviously desirable that there should be a mutual understanding between the several estates on this subject, as neither would choose to be subjected to a higher rate than the other. It was also expedient that this agreement should be arrived at before any communication upon the matter of supply was made by the commons to the crown. This gave rise to the practice of conferences between committees of the lords and commons preliminary to the grant of supply, upon which occasions each estate counted it an advantage to obtain a knowledge of the intentions of the other before disclosing their own.[b]

In the ninth year of Henry IV. the commons complained to the king of the lords, for having made known A.D. 1407.

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[a] Cox, Ant. Parl. Elections, pp. 84, 93.

[a] Hatsell, Prec. vol. iii. p. 95.—The three estates of the realm (viz. the lords spiritual, the lords temporal, and the commons: see *ante*, vol. i. p. 246), originally sat together in one chamber. When they first began to sit apart is uncertain. No doubt they often deliberated separately, and gave separate advice to the king, long before a formal separation took place. (See Hearn, Govt. of Eng. pp. 394-407). Their division into two houses must have been accomplished at any rate not later than the 17th year of Edw. III. (May, Parl. Prac. pp. 23-26.)

[b] Cox, Ant. Parl. Elec. p. 98. Parl. Hist. vol. i. pp. 110, 140, 163-171.

to his majesty certain particulars in regard to a proposed subsidy before it had been finally agreed upon by both houses, a proceeding which they affirmed to be 'in prejudice and derogation of their liberties.' The protest was successful. The king, with the assent of the lords, made an ordinance declaring that 'the lords on their part, and the commons on their part, shall not make any report to the king of any grant by the commons granted, and by the lords assented to, nor of the communications of the said grant, before the lords and commons be of one assent and accord; and then in manner and form as has been accustomed, that is, by the mouth of the speaker of the commons.' This was another triumph on behalf of the commons, which tended to aggrandise their authority, especially with reference to the grant of public money.[c]

A.D. 1327. Functions of Parliament.

Up to the time of Edward III., it is not easy to define wherein the functions of the national assembly differed from those which appertained to the king's particular council. The judgments of the ordinary council would undoubtedly derive additional weight and solemnity from being delivered in parliament; and the king himself was probably more ready to receive petitions for redress of grievances when surrounded by all his councillors. The chief point of difference, however, appears to have been, that after the commons were incorporated into the national assembly, a considerable time elapsed before they were permitted to take part in any act or proceeding which bore a judicial character. But in the reign of Edward III. there are instances wherein the commons attempted to participate in the exercise of remedial justice; and before the decease of that monarch, we find all the governmental institutions of England — namely, a king's council, a parliament of two chambers (into which the ancient great baronial council had become gradually

[c] Cox, Antient Parl. Elections, p. 100.

merged),[d] and courts of law—in distinct shape and harmonious exercise.[e] 1377.

The reign of Edward III. was, in fact, a great constitutional epoch. Independently of the organic changes in the composition of Parliament which characterised that century, it was also remarkable for the frequent holdings of the great national assembly, and for the passing of a law which rendered it imperative upon the king to meet his parliament 'every year once, and more often if need be.'[f] As a rule, under the Plantagenet sovereigns, the parliaments were newly elected every time they were convened, and not kept alive from year to year by prorogations.[g]

King Edward's legislative assemblies, moreover, were vigilant asserters of popular rights. They obtained from their sovereign repeated confirmations of the Great Charter, and succeeded in establishing three essential principles of government—namely, the illegality of raising money without consent of Parliament; the necessity that both houses should concur in any alteration of the law; and the right of the commons to enquire into abuses, and impeach the councillors of the crown for acts of corruption.[h]

From the latter part of the reign of Edward I. until the early part of the reign of Henry VIII., being a period of 213 years, it was customary for the monarchs of England A.D. 1299–1512.

[d] The 'great councils' continued for a time to be occasionally convened even after their most important functions had devolved upon Parliament. 'Some hundreds of years afterwards,' in 1640, Charles I. sought to find a substitute for the Parliament, with which he had hopelessly quarrelled, by reviving the long-disused baronial 'council.' But the endeavour to resuscitate an obsolete tribunal served only to widen the breach between the king and his people, and to precipitate his downfall. (See Dicey, p. 13; Knight, Pop. Hist. of Eng. vol. iii. p. 438; Hearn, Govt. of Eng. pp. 407, 461.)

[e] Palgrave, King's Council, pp. 22, 64. Dicey, p. 13. First Lords' Report, p. 169.

[f] 4 Edw. III. c. 14, confirmed by 36 Edw. III. c. 10.

[g] Smith, Parl. Rememb. (1865), p. 7.—The prorogation and reassembling of the same Parliament appears to have first occurred in the reign of Henry VI. But it was not until the accession of Henry VIII. that it became an habitual practice. (Parry, Parlts. pp. lvii.–lix.)

[h] Taylor, Book of Rights, pp. 67, 68. Cox, Inst. Eng. Govt. p. 229. Parl. Hist. vol. i. p. 141.

Frequent meetings of Parliament.

to consult frequently with the great council of the nation. A year would seldom elapse without a parliament being convened, and sometimes two or three meetings would take place within twelve months. It has been ascertained that, in the interval above mentioned, upwards of two hundred separate parliaments were assembled. They usually sat for a period varying from four to thirty days; but, occasionally, the sessions would be protracted for several months.[i]

The Privy Council in Parliament.

And here we may notice, that it had long been customary for the king's councillors, as confidential servants of the crown, to be present at every meeting of the 'Magnum Concilium,' or High Court of Parliament. The select or (as it was afterwards designated) 'Privy Council' were uniformly required by the sovereign to assist at the deliberations of the great council. But it should be borne in mind that the Court of Parliament of this age really signified the House of Lords, and that, in a judicial sense, the terms were and still are synonymous.[j] It was contended by Sir Matthew Hale that, in very ancient times, before the reign of Edward I., and perhaps down to the middle of the reign of Edward III. (by which period, at any rate, the Lords and Commons had regularly formed themselves into separate legislative chambers), the Privy Council had an essential right not merely to advise, but also to vote, in the judicial determinations of Parliament.[k] Recent authorities, however, are of opinion that this is erroneous. The privy councillors undoubtedly formed part of the great council, or Court of Parliament, but it is most probable that they merely 'gave reasons,' without voting—as is still done by the assistants in the House of Lords, when required. It is evident, at any rate, that about the time of Edward III. those who sat in Parliament by virtue of their office as king's councillors, began to be

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[i] Parry, Parlts. of England, pp. lv.–lix.

[j] Macqueen, Practice of Lords and Privy Council, pp. 671, 680.

[k] Hale, Jurisdict. House of Lords, p. 85.

regarded in the light of assistants or advisers merely, whilst the authoritative and judiciary power was exercised by the House itself.[l] And Sir Matthew Hale admits that, though 'they were assistants of such a nature, quality, and weight, that their advice guided matters judicial and judicial proceedings in the Lords' House,' yet 'they had no voice in passing of laws,' but only 'spake their judgments and gave their reasons' in matters of judicial concern.[m] The Commons, meanwhile, having secured their own position as an integral part of Parliament, and having acquired the right of impeachment, laboured to prevent the council from exercising any extraordinary jurisdiction, or powers not distinctly warranted by law, when acting independently of Parliament. This point they also gained.[n]

Growth of the Privy Council.

In process of time, the connexion which anciently subsisted between the Privy Council and the Court of Parliament, *i.e.* the House of Lords in their judicial capacity, came to be dissolved—though not without leaving traces in existing usage of the old relations—and the Privy Council gradually assumed a separate and independent jurisdiction of its own. This change took place under Richard II., when the council was entirely separated from Parliament, and began to fulfil its appropriate functions as a distinct tribunal. With the sanction of Parliament its separate duties were defined, and thenceforward its authority was acknowledged without any further opposition, save only when it attempted to interfere in matters beyond its jurisdiction.[o] The council continued to gain strength and influence until it attained the climax of its powers under the Tudor princes, whose policy was to increase the authority of the Privy Council, and to govern as much as possible without the aid of Parliaments. A notable instance of this is afforded in the reign of Henry VIII.,

A.D. 1397.

Parliament seldom convened.

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[l] Macqueen, p. 674. Palgrave, King's Council, p. 64.

[m] Hale, Lords' Jurisdiction, p. 71.

[n] Palgrave, King's Council, pp. 69, 82.

[o] *Ibid.* pp. 78, 80, 84, 97. And see *post*, p. 29.

which lasted for nearly forty years, during which period Parliament did not sit in all for more than three years and a half; and during the first twenty years, the duration of all its sessions put together was less than a twelvemonth.[p]

It will not fail to be observed that the presence, from the very first, of the members of the king's Privy Council in the great council or Court of Parliament was a foreshadowing of the more intimate relations which were afterwards established between the ministers of the crown and the legislature under parliamentary government.

Relations between the king and his ministers.

In the gradual development of free institutions which so happily distinguishes the reigns of our English monarchs from the accession of Henry III., a remarkable incident is recorded, of the time of Edward II., which manifests a decided recognition in that early period, of constitutional relations between the sovereign, his ministers, and parliament. In 1316, the Earl of Lancaster, who had heretofore been a prominent leader of a powerful confederacy of discontented barons, was himself invited by the king to become president of his council. The earl agreed to accept office on certain conditions, which being complied with by the king, he was duly installed in open Parliament; and his oath, or protestation, which embodied the stipulations which he had made, was ordered to be entered upon the rolls of Parliament. After reciting the terms of the appointment, it proceeds as follows: 'So as at any time, if the king shall not do according to his directions, and those of his council, concerning the matters of his court and kingdom, after such things have been shown him,—and that he will not be directed by the council of him, and others—the earl, without evil will, challenge, or discontent, may be discharged from the council,' and that 'the business of the realm' shall

A.D. 1316.

[p] Macqueen, pp. 675, 680.

not be done without the assent of the members of the council; and if the council 'shall advise the king, or do other thing which shall not be for the profit of him and his realm, then, at the next Parliament, by the advice of the king and his friends, they shall be removed.' The entry on the roll concludes with these emphatic words, which show that the order in the present case was the general and acknowledged rule under similar circumstances: 'And so it shall be, from Parliament to Parliament, as to them and every of them, according to the faults found in them.'[q]

Nearly one hundred years later, in the reign of Henry IV., we meet with a similar instance of the acknowledgment of the right of a minister of state to relinquish his office, without offence to the king, when he found himself unable to continue to discharge the same to the public welfare. It is thus noted by Sir Harris Nicolas: 'In May 1406, the king having taken into his consideration the numerous claims upon his time and attention, in the affairs of the kingdom, appointed three bishops, six temporal peers, the chancellor, the treasurer, the keeper of the privy seal, the steward and chamberlain of his household, and three other persons, members of his Privy Council, and commanded them to exert themselves as much as possible in promoting the welfare, and in maintaining the laws and statutes, of the realm. The king then directed that all Bills indorsed by the chamberlain, and letters under the signet addressed to the chancellor, treasurer, and keeper of the privy seal, should thenceforward be indorsed by, or be written with the advice of, the council.' None of the officers aforesaid, or any others, were 'to grant any charters of pardon, or collations to benefices, except with the advice of the council; and for the greater security and independence of its members, the important condition was added, that they might resign A.D. 1406.

[q] Parl. Hist. vol. i. p. 64. Parry, Parliaments of England, p. 80.

whenever they found themselves unable to perform their duties with advantage to the king's service, without their retirement exciting his displeasure.'[r]

A.D. 1376. King's council regulated by Parliament.

But meanwhile Parliament had begun to direct its attention to the character and composition of the king's council. In the last year of the reign of Edward III., the commons undertook to represent to the king, that it would be for his advantage, and that of the whole realm, if he would increase his council with ten or twelve 'lords, prelates, and others, who should be continually near the king; so as no great business might pass without the advice and assent of six, or four of them, at least, as the case required.' His majesty acceded to this request, with a proviso that the chancellor, treasurer, and privy seal might execute their offices without the presence of any of the said councillors. The commons then made further protestation of their willingness to aid the king to the utmost of their power; but pointed to the fact that, 'for the particular profit and advantage of some private persons about the king, and their confederates, the realm was much impoverished.' They then proceeded to impeach certain of these evil councillors, and caused them to be dismissed from the king's council, and their goods confiscated[s]—a proceeding which was frequently repeated during the reign of Richard II.[t]

A.D. 1406–1455.

In further illustration of the growing power of Parliament, and of its acknowledged supremacy, in the reign of Henry IV., and in that of his son and grandson (Henry V. and Henry VI.), we find certain of the king's household removed upon petition of the commons; and Parliament occupying itself in framing regulations and ordinances for the governance of the king's council and the royal house-

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[r] Nicolas, Proceedings Privy Coun. vol. vi. p. cxlvi. citing Parl. Rot. vol. iii. p. 572. Lord Lovell, who was appointed a member of the council on that occasion, prayed to be, and was, excused from serving, because he had certain suits pending in the courts of law, which, he said, would prevent his performing his duty 'honestement.'—*Ibid.* p. 573.

[s] Parl. Hist. of Eng. vol. i. p. 141.

[t] Cox, Antient Parl. Elec. p. 93.

hold, which, being made into a statute, the council, together with all the judges, and the officers of the household, at the command of the king, take oath to observe. This is a very important assertion of the principle of ministerial responsibility.[u]

From this period until the accession of Henry VII., the history of the king's council is chiefly remarkable for the gradual development of its administrative functions, for the introduction of forms, intended to operate as constitutional restraints upon the personal exercise of the royal will, and for a corresponding increase of power on the part of the leading ministers of state of whom the council was composed. On the other hand, the personal influence and authority of the sovereign during the whole of this era was very great, though it necessarily varied according to the ability or strength of character of the reigning monarch. With a vigorous prince upon the throne, the council became the mere instrument of his will, the channel through which the royal mandates passed. At other times, the influence of a powerful nobility was exerted to curb the arbitrary exercise of kingly rule, and to aggrandise the authority of his ministers.[v] Moreover, the ministers themselves occupied, to some extent, an independent position. The king could indeed appoint or dismiss them at pleasure; but it was essential that he should have a council of some sort, and certain official personages necessarily formed part of every council. These were the five great officers of state above-mentioned—viz., the chancellor, the lord treasurer, the keeper of the privy seal, the chamberlain, and the steward of the household, who all had seats at the council board *virtute officii*. In addition to these functionaries, the council usually included the Archbishops of Canterbury and York, and from ten to fifteen other spiritual or temporal lords, or men of mark,

A.D. 1485.

Development of the council.

Its composition.

[u] Nicolas, Proc. P. C. vol. i. p. lxii.; vol. iii. pp. viii., xviii.; vol. v. p. xiii.; vol. vi. p. lxxiii. Parl. Hist. vol. i. pp. 291, 303. Forster, Debates on the Grand Remonstrance, p. 49.

[v] See Dicey, Privy Council, p. 16.

who possessed the confidence of the king and of Parliament.[1] For while the sovereign had an absolute right to appoint or remove his councillors at pleasure, the English monarchs appear to have been generally careful to choose men as their advisers and ministers who were acceptable to the lords and commons.[v] Some of the official members of the council, during this period, held offices which were not in the direct gift of the crown, but were hereditary in certain families. Again, the presence of the archbishops and other ecclesiastics imparted a dignity and independence to the body otherwise unattainable. With such a position it was not difficult for a refractory council to cause its power to be felt. They were privileged to approach the sovereign with advice or remonstrance upon any matter affecting the common weal. Their rebukes might indeed be disregarded, and their counsel overruled; but the moral effect of their interposition could not be ignored.

Growing power of the council.

What added materially to the weight and influence of the council was that, through the instrumentality of the chancellor, they could refuse to give effect to the king's wishes, or to legalise his grant; for, from a very early period, they had claimed to take cognisance of every grant or writ issued by the king. The 'great seal' remained in the custody of the chancellor, and could not be affixed to any document except by his hand. It is true that this rule was often regarded by sovereigns as a vexatious and unwarrantable restraint; and that they sought to escape from it, either by retaining personal possession of the great seal, or by claiming that signature by means of smaller royal seals (which at first were kept in the king's own hands) was sufficient to authenticate any writ or other missive. But Parliament remonstrated against such practices, and claimed that a rule which was a protection to the crown itself, against fraud, should be strictly en-

The great seal.

[v] Sir H. Nicolas, P. C. vol. i. pp. ii., iii.

forced. At length the privy seal passed into the hands of a regular officer, when it was maintained by the lawyers, The privy seal. though contested by the crown, that the great seal ought to be affixed to no bill on a verbal warrant, or otherwise than upon a formal writ of privy seal.[x] These circumstances contributed to confer upon the king's council great and increasing weight and influence.

Moreover, upon constitutional grounds, this doctrine in regard to the seals was of obvious necessity: for the chancellor could not prove that he had obeyed a royal mandate unless he had a formal warrant to show for what he had done. Yet while this plea, and probably also the convenience to the crown of throwing upon its servants a measure of responsibility for its own acts, reconciled the king to this restriction upon the free exercise of his will, the restraint was felt as peculiarly irksome by the monarchs of England during this epoch. During the reign of Edward IV., that sovereign 'on many occasions enforced his directions in his letters to the chancellor by adding his commands in his own handwriting;' and once it is mentioned of him, that he expressed his indignant A.D. 1465. surprise that the chancellor did not deem his majesty's *verbal* commands 'sufficient warrant' for the issue of a particular instrument.[y]

These constitutional safeguards against the unrestrained Constitutional securities. exercise of the royal prerogative were enforced, from time to time, by further regulations to the same effect. By an order of the council in the reign of Henry VI., A.D. 1443–1444. rules were adopted which practically ensured that every grant of the crown should, from the moment of its presentation as a petition, or warrant, to the time of its final sanction by royal writ, be brought under the notice of the king's ministers.[z] In the reign of Henry VIII. all A.D. 1526. these rules were, in substance, re-enacted; and, so far as

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[x] Dicey, pp. 17-20.

[y] Sir H. Nicolas, Proc. of Privy Council, vol. vi. pp. cxcv., cxcvi. Dicey, p. 20.

[z] See Sir H. Nicolas, vol. vi. pp. xci–xcv

regards the issue of royal patents, grants, &c., they still continue in operation, with but little change—excepting that grants which were formerly superintended by the Privy Council now pass through the office of a Secretary of State.[a] Nevertheless, the end which was intended to be promoted by these regulations was not in accordance with the modern idea of ministerial responsibility. They were designed for the security of the crown itself, against fraudulent or unnecessary grants; and for this purpose, numerous official personages were required to take part in the investigation into and decision upon petitions to the crown. They were also intended to enforce the necessity for consulting the council before the king should determine upon any application for redress. But, after all, the responsibility of ministers for the faithful discharge of their high functions was to the crown, and not to Parliament.[b]

A.D. 1422. It was during the reign of Henry VI. that the 'ordinary' or 'permanent' council first assumed the name of the 'Privy Council.' The habitual attendants at the council, by whom the ordinary business was transacted, came, at this time, to be distinguished from other members of the same body who, like the judges, were only occasionally summoned by the king. During the minority of Henry VI. this distinction was the more apparent, as the whole government was in the hands of a select number of the king's council. Ordinances of council passed in this reign provide for securing privacy at council meetings, and the keeping its resolves secret, by forbidding any to attend thereat unless specially summoned. Meetings of the 'great council' were occasionally held by the king's command. But it is clear that under Henry VI. a select council was gradually emerging from out of the larger body, by a process similar to that which afterwards

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[a] Cox, Eng. Govt. p. 648. vi. p. cc. &c. vol vii. p. v. Dicey,
[b] Sir H. Nicolas, Proc. P. C. vol. p. 21.

gave birth to the Cabinet from the womb of the Privy Council.[c]

Business before the council.

The business which engaged the attention of the king's council during the epoch under review was of the most multifarious description, and its proceedings exhibit an extraordinary combination of the executive and legislative functions of the government. Grave affairs of state, and questions of domestic and foreign policy; the preservation of the king's peace, and the management of the public finances; the affairs of aliens, the regulation of trade, the settlement of ecclesiastical disputes, and the defence of the faith against heretics and sorcerers—all these subjects, as appears from the minutes which have been preserved of the proceedings of council, formed part of its ordinary administrative labours. Together with these important matters, the time of the council was occupied, as that of every government must be, with an infinite number of trivial cases. And although law-courts had been established for the determination of every species of action or suit, we still find the council exercising judicial functions, not merely for the preservation of the public peace, but for the trial of ordinary offenders. Whenever, in fact, either from defect of legal authority to give judgment, or from want of the necessary power to give effect to their decisions, the law-courts were likely to prove inefficient, the council interposed, by summoning before it defendants and accusers. A tribunal of this description was doubtless useful, in the infancy of regular institutions, for the security of life and property, but its action was arbitrary and capricious. It was regarded with a natural jealousy by Parliament, and from the reign of Edward III. to that of Henry VI., the Commons made vigorous efforts, on repeated occasions, to prevent the council from interfering with matters which belonged to the courts of law, and

[c] Dicey, pp. 22, 23; Nicolas, Proc. P. C. vol. i. p. lxxiii., vol. v. pp. xxii. xxxiii., vol. vi. pp. lxi. lxxxi. &c.

from illegally infringing upon the property and liberties of the people.[d]

The records of the Privy Council during the reigns of Edward IV., Edward V., Richard III., and Henry VII. have not been preserved, so that nothing certain is known of the constitution of the council under those monarchs.

A.D. 1485. With the accession of the Tudor dynasty, the position of the Privy Council towards the monarchy underwent a noticeable change. After the Conquest, the power of the barons had been exerted to curb the despotic will of the sovereign. In later times, the prerogative was exposed to assault from the rising power of the Commons; whilst the nobles, for the most part, loyally supported the throne. The history of the council, from the accession of Henry VII. to the sixteenth year of Charles I., is the history of regal supremacy, potentially exercised through a body of ministers, who had ceased to be a check upon the royal will. This new position of the council towards the crown was mainly brought about by the introduction therein of a number of commoners, who owed their position and influence entirely to the king's favour. The new councillors were doubtless men of mark and ability, but, unless noble by station, they could not be independent of the crown. And where hereditary offices were held by peers, it frequently happened that a deputy was chosen from amongst the commoners, to perform the duties and exert the influence of the post. This gave additional strength to the crown, and was the means of rendering the government more efficient, but it greatly undermined the independence of the council.[e] The change in the composition of the Privy Council did not escape the notice of the common people, by some of whom it was regarded with much dissatisfaction. About twenty-five years after the accession of Henry VIII. there was a rising in Yorkshire. The malcontents demanded of the king redress of griev-

Dependence of the council on the king.

A.D. 1536.

[d] Dicey, pp. 25–34. Nicolas, Proc. P. C. vol. i. p. ii.
[e] Dicey, pp. 38–42.

ances. One of their complaints was that the Privy Council was then formed of too many persons of humble birth, whilst at the commencement of his majesty's reign it had been otherwise. The king told them, in reply, that at his accession there were in the council 'of the temporality but two worthy calling noble, the one treasurer of England, the other high steward of our house; others, as the Lords Marney and Darcey, but scant wellborn gentlemen, and yet of no great lands until they were promoted by us, and so made knights and lords: the rest were lawyers and priests, save two bishops, which were Canterbury and Winchester.' Henry proceeded to show that there were then 'many nobles indeed, both of birth and condition,' in the council; but, in conclusion, he informed the rebels, very emphatically, 'that it appertaineth nothing to any of our subjects to appoint us our council, ne we will take it so at your hands. Wherefore, henceforth, remember better the duties of subjects to your king and sovereign lord, and meddle no more of those nor such-like things as ye have nothing to do in.'[f]

Complaints against the council.

The altered relations between Church and State at this period, consequent upon the Reformation, contributed greatly to increase the authority of the crown. No longer dependent on a foreign potentate, but on the king himself, the dignitaries of the Church imparted a new vigour to the monarchy, when they ceased to be the representatives of a rival power. But, in proportion as the personal authority of the sovereign increased, the influence of the Privy Council was weakened. The records of the time bear ample testimony to the condition of servility and dependence upon the sovereign to which the council at this epoch had been gradually reduced.[g]

Meanwhile, however, the power of the council as an administrative body was in nowise diminished. On the contrary, this was emphatically the age of 'government

[f] Sir H. Nicolas, Proc. P. C. vol. vii. pp. iii., iv.
[g] Dicey, pp. 42, 43.

Government by councils.

by councils.' 'Unconstitutional and arbitrary as many of the ordinances of council in the fifteenth century now appear, they almost seem mild when compared with many of those of the Privy Council of Henry VIII. Combining much of the legal authority with the civil and political, it exerted a despotic control over the freedom and property of every man in the realm, without regard to rank or station. Its vigilance was as unremitting as its resentment was fatal; and its proceedings cannot be read without astonishment, that the liberties and constitutional rights of Englishmen should ever have recovered from the state of subjugation in which they were then held by the crown.'[h] Chiefly concerning itself in securing the internal tranquillity of the kingdom, and in detecting and punishing treason or sedition, the Privy Council also directed its attention to 'nearly everything connected with the conduct of individuals towards each other, and in relation to the government.' It interposed in matters of private concern, making itself the arbitrator of quarrels between private individuals—thereby encroaching upon the province of the established courts of law. It likewise interfered in ecclesiastical affairs, when its proceedings were often of the most despotic character. In all matters brought before it the council exercised a very summary jurisdiction, usually punishing offenders by committing them to the Tower, by fine, or imprisonment, or both.[i] Reviewing the proceedings of the Privy Council during this period, Sir Harris Nicolas is of opinion, 'that the arbitrary and unconstitutional powers which the government then exercised, arose less from the personal character of the reigning monarch, congenial as despotism was to his feelings, than from a gradual encroachment on the liberties of the people, and a corresponding extension of the prerogatives of the crown, during the latter part of the fifteenth, and continued until the middle of the sixteenth

[h] Sir H. Nicholas, Proc. P. C. vol. vii. p. xxiv.
[i] *Ibid.* pp. xxv., xxvi., xxxi, xlv., xlix.

century. This innovation may probably be traced to the usurpation of Richard III., followed by the usurpation of Henry VII.; it being scarcely possible for the liberties of a country to survive two revolutions, or for a successful rebel not to become a tyrant.'[k]

Power of the Crown under Henry VIII.

From the constitution of the Privy Council under the Tudor sovereigns, it might be supposed that every political measure, if it did not originate with the Council, was at any rate deliberated upon by that body. But such was not at all the case. 'Henry VIII. was in the fullest sense of the word his own minister; and all the most important matters, particularly in relation to foreign policy, proceeded immediately from his own mind, and were conducted upon his own judgment.' The modified form of ministerial responsibility which we have seen was established by command of Henry IV., and which continued to be enforced in subsequent reigns, was set at nought by Henry VIII., as appears from transactions recorded in State Papers of the period: 'As there were some occasions on which he did not even consult his favourite minister, it may be inferred that there were many more on which he acted without the advice of his council.'[l] For a time Wolsey was his favourite, and then Cromwell; but after the fall of Cromwell, no one minister bore even the slight resemblance presented by these statesmen to a modern premier. In fact, Henry issued his commands to any of his ministers, without regard to their peculiar duties; but, 'as no responsibility to the country was incurred, it mattered little whom the king selected to carry his orders into effect. He was himself the centre from which every measure emanated, and his ministers had nothing more to do than to receive his commands and obey them. But all communications between the ministers and the king, relating to the affairs of government, seem, even in that arbitrary period, to have been made

[k] Sir H. Nicolas, Proc. P. C., vol. vii. p. lxvi.
[l] *Ibid.* pp. xi., xii.

through a privy councillor; so that the forms of the Constitution were, in this important point at least, strictly adhered to; and, however forgetful Parliament might have been of its duties, means always existed of fixing the responsibility for the acts of the crown upon those to whom, according to the laws, it entirely and exclusively attaches.'[m]

During the reign of Henry VIII., the greater part of the members of the Privy Council appear to have been in regular attendance upon the king; accompanying him wherever he went, and giving their daily attention to the business of the state. These were usually the great officers of the household, a bishop, and one of the principal secretaries; whilst other functionaries—such as the Lord Chancellor, the Archbishop of Canterbury, the other principal secretary, and a few minor officials—remained in London, to dispose of the ordinary and routine affairs of government. Occasionally, however, the whole council assembled together, either for ordinary purposes, or at the special command of the king.[n]

By means of rules adopted for its internal improvement, the Privy Council was brought to a high state of efficiency for the discharge of the numerous and important duties which devolved upon it at this period. In 1553, King Edward VI. drew up a series of regulations for his council, under which the whole body (which then consisted of forty persons) was divided into five commissions, or (as they would now be termed) committees, to each of which was assigned a distinct branch of public business. Upon some of these committees certain persons, mostly judges, were added. They were styled 'ordinary councillors,' and were not consulted on questions of general policy. This practice has been adhered to to the present day. It was also provided, by these new regulations, that every matter should be brought under the

Division of council into committees.

[m] Sir H. Nicolas, Proc. P. C., vol. vii. pp. xiv., xv.
[n] *Ibid.* pp. ix., x., xv.

royal notice, that 'if there arise such matters of weight as it shall please the king's majesty to be himself at the debating of, then warning shall be given, whereby the more shall be at the debating of it,'[o] and that the secretaries should be the channel of communication between the councillors and their royal master.[p]

King's secretary.

The office of secretary, or king's clerk, it may be here remarked, was originally held in small estimation. The secretary possessed no political influence, unless, as sometimes happened, he was a member of the council. At length it became necessary to appoint two secretaries, after which, by almost imperceptible degrees, the dignity of the office was increased. During the reign of Henry VII. persons of weight were selected to fill the post. In the following reign we find the secretaryship held by Cromwell. Henceforth the secretaries take rank with barons, are always members of the council, and by the Act 31 Henry VIII. c. 10, become entitled to this position *ex-officio*. But it was not until the latter part of the reign of Elizabeth that we find them designated Secretaries of State.[q]

Star Chamber.

By the regulations of 1553, above mentioned, all the business of the Privy Council was transacted through committees, which were variously modelled, as occasion required. The same persons sat on different committees. From this arrangement a body known in history as the Star Chamber came into existence, and acquired evil fame from its arbitrary and tyrannical proceedings. The Star Chamber was, in effect, the council under another name. It was frequently presided over by the king himself, and even in his absence transacted business with great dignity and solemnity; hence it will be seen that the council had abated none of its ancient pretensions to

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[o] From a very early period it would seem to have been the practice for the Council to meet for the ordinary transaction of business without the king being present. But the sovereign was evidently at liberty to attend whenever he thought fit. (Sir H. Nicolas, Proc. P.C. vol. i. pp. xxv., xxxiv., lviii., vol. vii. p. xiii. Dicey, p. 15.)

[p] Dicey, pp. 39–43.

[q] *Ibid.* p. 41. Thomas, Notes on Pub. Dep. p. 27.

the plenary exercise of judicial power. Besides asserting the right to act in almost every case where a law-court had jurisdiction, the king and his councillors avowedly acted 'in cases not examinable in other courts.' The secret tribunal of the Star Chamber continued in operation up to the reign of Charles I., when the struggles of Parliament against the judicial authority of the Council, so long intermitted, were again revived with accumulated vigour, until (by the statute 16 Car. I. c. 10) it was determined that 'neither his majesty nor his Privy Council have, or ought to have, any jurisdiction, power, or authority, by English bill, petition, articles, libel, or any other arbitrary way whatsoever, to examine or draw into question, determine or dispose of, the lands, tenements, hereditaments, goods, or chattels of any of the subjects of this kingdom; but that the same ought to be tried and determined in the ordinary courts of justice, and by the ordinary course of the law.' By the same statute, the power 'that the Council Table hath of late times assumed unto itself, to intermeddle in civil causes and matters only of private interest between party and party,' is declared to be 'contrary to the law of the land, and the rights and privileges of the subject.' The Star Chamber, with its cognate jurisdictions, was accordingly by this Act swept away, and the most part of those judicial powers which the state policy of former generations had bestowed upon the council, were utterly abolished.[r]

Arrests by councillors.

During this period of 'government by councils,' the privy councillors, in addition to their potent authority as members of a board of such pre-eminence in the state, assumed the right of arresting their fellow-citizens at their own individual discretion. It may be thought that such an act would have been justified by the use of the king's name. But the councillors claimed the authority

[r] Sir H. Nicolas, Proc. P. C. vol. vii. p. xxiv. Dicey, pp. 45–57, which gives a curious and minute account of the doings of the Star Chamber. See also Palgrave, King's Council, pp. 38, 100, 110.

as pertaining to themselves, and the judges admitted the validity of their claim, so far at least as commitments 'by order' of the Council Board' as well as by royal command were concerned.[s]

Queen Elizabeth

The government of Queen Elizabeth was conducted almost exclusively through the medium of her Privy Council, individually or collectively; Parliaments (though regularly convened at intervals of from one to four years) being regarded by her as mere instruments of taxation, to which she abstained from resorting except upon necessity. The practical disuse of Parliaments during the Tudor dynasty naturally led to a larger assumption of jurisdiction on the part of the Privy Council, which retained much of the authority thus unlawfully acquired, even after the recurrence by later sovereigns to the constitutional services of Parliament.[t]

and her Parliaments.

The powerful system so elaborately matured by the Tudor sovereigns expired with them; and the period between the death of Elizabeth and the restoration of the Stuarts may be considered as the time when 'government by councils' came to an end.[u] But meanwhile, the Parliaments of Elizabeth, unlike their timid predecessors in previous reigns, were remarkably outspoken; and the Commons did not hesitate to tender their advice to the queen, not merely upon affairs of Church and State, but even upon the more delicate topics of a royal marriage and the succession to the throne. True, they were repeatedly commanded not to interfere in any matters touching her majesty's person, estate, or church government, but such as might be propounded to them by the queen herself. But they made good their claims to a higher consideration, by successfully asserting the necessity for redressing various grievances affecting the commonwealth.[v] And so there followed in due course, and as it were by natural

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[s] Dicey, p. 56.
[t] Macqueen, Privy Council, p. 680. Hearn, Govt. of Eng. p. 132.
[u] Dicey, p. 59.
[v] See Parry's Parlts. pp. 214–239.

Parliament under the Stuart kings.

consequence, 'the mutinous Parliament of James I., and the rebellious Parliament of Charles I.'[w] And, concurrently with these proceedings, new requirements arose on the part of the crown, which could only be met by the cordial assistance of the House of Commons. The circumstances under which the power of Parliament, in contradistinction to that of the monarchy, gained strength and development under the Stuart kings, belong to general history, and need not be here enlarged upon. It will suffice to refer to two leading events, which indicate the process whereby the House of Commons attained the position, co-ordinate in power with the crown itself, which it has occupied since the Revolution of 1688.

During the altercations between the Crown and Parliament which characterised the reign of Charles I., it became necessary to provide for the maintenance of a standing army. At first the troops were paid out of the king's own revenues; but James II. having increased his army to 30,000 men, it began to be regarded with great jealousy, as being calculated to strengthen the power of the crown, to the detriment of the rights and liberties of the subject. Accordingly, a provision was inserted in the Bill of Rights,[x] forbidding the raising or keeping a standing army within the kingdom, in time of peace, without the consent of Parliament. The practice of appropriating the supplies granted to the crown by Parliament to separate and distinct services, was first introduced in the time of Charles II.,[y] though it did not become an established usage until the Revolution, when it was formally incorporated amongst the maxims of the Constitution, that the grant of supply, and the control of the public expenditure in conformity therewith, belongs inalienably to Parliament, and pre-eminently to the House of Commons.[z] By the recognition of these two principles a salutary check

[w] Bagehot, English Const. Fortnightly Review, vol. vii. p. 83.

[x] 1 Will. and Mary, Sess. 2, c. 2.

and see *ante*, vol. i. p. 320.

[y] See Hearn, Govt. of Eng. p. 342.

[z] See *ante*, vol. i. p. 527.

was provided against the exercise of arbitrary power, and at the same time the constitutional influence of the House of Commons, as the source of all aids and supplies, was asserted and guaranteed.[a] From this epoch we may date the downfall of prerogative government in England, and the rise of parliamentary government. Downfall of prerogative government.

But this momentous change in our political system was not effected at once, or without an effort on the part of the crown to recover its ancient supremacy. Irritated by the opposition he systematically encountered from the House of Commons, Charles I. abstained from convoking Parliament for a period of eleven years, from March 1629 to April 1640—a longer interval than had ever before elapsed without some meeting of the national council.[b] At length, in 1640, the famous Long Parliament was assembled.

The first act of this Parliament, however, was, as we have seen, to abolish the Star Chamber, and to deprive the Privy Council of most of its judicial power, leaving its constitution and political functions unchanged. In all matters of government the will of the sovereign continued supreme; and though ministers were individually powerful, they had not, and were not expected to have, a mutual agreement in regard to public affairs. They often differed amongst themselves on important questions; but as each minister was responsible merely for the administration of his own department, it was not considered essential that they should be of one mind on matters of state policy. The responsibility of ministers, moreover, for the ordinary fulfilment of their official functions, was practically to the king, and to him alone. Ministerial responsibility.

The course of events which ensued upon the accession of Charles I. to the throne unmistakably proved that a more intimate and cordial understanding between the Crown and Parliament, in the conduct of public affairs,

[a] Knight, Hist. of Eng. vol. v. pp. 71, 76.

[b] Macaulay, Hist. of England, vol. i. p. 85.

Charles I. and the House of Commons.

had become indispensable to the very existence of monarchical government. In the protracted contest that arose between the King and the House of Commons, much mutual misunderstanding might have been avoided if Charles had had some confidential minister to espouse his cause and defend his policy within the walls of Parliament. The bitter antagonisms which arose between the king and his people might have been reconciled if only the king's ministers had not been so distasteful to the House of Commons. As it was, the servants of the crown were generally regarded by the commons with mistrust or aversion; and if their acts merited condemnation, there was no alternative but to proceed against them by way of impeachment—a procedure which at the best was a cumbrous process, fruitful of delay, uncertain in its issue, and provocative, meanwhile, of further illwill against the crown itself. If only some method could have been devised to enable the king's ministers to commend themselves to the goodwill of Parliament, these perpetual causes of irritation might have been effectually removed.

Overtures indeed, on the part of the Long Parliament, were not wanting to point out to the king terms of agreement and reconciliation; and although they involved for the most part the surrender of more power than the crown was willing to relinquish, it is remarkable that upon one occasion the principle of ministerial responsibility was distinctly adverted to, as a means of conciliating the favour of Parliament, and of protecting the king from evil counsellors. In the Grand Remonstrance addressed by the House of Commons to Charles I., in 1641, reference is made to 'those cases of not infrequent occurrence, when the commons might have just cause to take exceptions at particular men for being selected to advise the king, and yet have no just cause to charge them with crimes.' It is added that 'the most cogent reasons might exist to be earnest with the king not to put his great affairs into such hands, though the commons might be

Grand Remonstrance.

unwilling to proceed against them in any legal way of impeachment.' It is then plainly stated, 'that supplies for support of the king's own estate could not be given, nor such assistance provided as the times required for the Protestant party beyond the sea, unless such councillors, ambassadors, and other ministers only were in future employed as Parliament could give its confidence to.'[c] But the king had already declared that he would neither separate the obedience of his servants from his own acts, nor permit them to be punished for executing his commands.[d] The time for moderate counsels to prevail had gone by, and the downfall of the monarchy was the deplorable but inevitable consequence. The circumstances which led to this event belong to general history, and need not be dwelt upon in these pages. Suffice it to state that, after a brief contest with the Long Parliament and its adherents, Charles I. was taken prisoner, tried, and executed on January 30, $164\frac{8}{9}$.

Execution of the king.

Immediately afterwards Parliament proceeded to take steps to provide for the future government of the country. On February 7, they voted 'that the office of a king in this nation was unnecessary, burthensome, and dangerous,' and should be abolished; and having on the previous day decreed the abolition of the House of Peers, they ordered, 'that there be a Council of State erected, to act and proceed according to such instructions as shall be given to them by the House of Commons.'[e] In the composition of this council, the parliamentary majority were in a position to carry out their own ideas as to the sort of persons who ought to be entrusted with supreme authority, and to ensure that the administration of public affairs should be in direct conformity with their own opinions. For a time the experiment proved successful, and, thanks

Council of State.

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[c] Forster, Debates on the Grand Remonstrance, pp. 272, 273. And see *ante*, vol. i. p. 37.

[d] Campbell's Chancellors, vol. ii. p. 532.

[e] Parl. Hist. vol. iii. pp. 1285, 1292. Com. Journ. Feb. 7, $164\frac{8}{9}$.

to the energy, learning, and political experience of the leading men in the Council of State, the government of the country, so long as it remained in their hands, was conducted with much wisdom and ability.[f]

The Council of State consisted of forty-one persons, lords and commoners, who were chosen by the House of Commons in the name of 'the Parliament of England,' and of whom nine were a quorum for the despatch of business. A majority of the councillors were also members of the House of Commons; and as the average number of members attending that House did not then exceed fifty, the Council naturally became the more powerful body; and having all the public business of the nation under review, they left but little for the House to do, except to confirm, by Act, such matters as the Council thought fit to submit for their sanction.[g] But, in point of fact, it was usual for the Council to refer all matters of special importance to the consideration of the House, who were thus enabled to exercise a controlling influence over their proceedings.[h]

The Council of State was eminently a deliberative body, and the rules which they framed for their own guidance were calculated to ensure the most attentive and careful consideration of every subject before them, by the members present at any particular meeting.[i] Either directly, or through their committees, the Council also transacted the business which is now apportioned amongst various departments of state. Besides affairs belonging to the Treasury, and to the different branches of the secretariat, they were charged with the trust heretofore exercised by the Lord High Admiral and by the Master of the Ordnance.[j] The creditable and successful manner

[f] Bisset, Commonwealth of England (2 vols. Lond. 1867), vol. i. pp. 49, 118–123.

[g] Parl. Hist. vol. iii. p. 1291. Bisset, Commonwealth of England, vol. i. pp. 24, 36.—The original minutes of all the proceedings of the Council of State, until its overthrow by Cromwell, are preserved in the State Paper Office, in excellent condition. (*Ibid.* p. 39.)

[h] Bisset, vol. i. p. 43; vol. ii. pp. 55, 57.

[i] *Ibid.* vol. ii. pp. 293-296.

[j] *Ibid.* vol. i. p. 116; vol ii. p. 72.

in which their multifarious labours were accomplished is the more remarkable, when it is considered that on an average eighteen or twenty members attended at sittings of the Council, and that frequently the number present was much larger.[k]

The Council was chosen for a period of one year only, at the expiration of which term all the members were re-elected except three. Two were added to supply vacancies by death, so that there were in all but five new members. But at the end of the second year Parliament resolved to adopt a different principle. Accordingly, on February 5, 165$\frac{0}{1}$, they decided that the Council of State for the ensuing year should again consist of forty-one members, but that only twenty-one of the existing councillors should be capable of re-election. The same rule was followed upon the election of the Council for the fourth time.[l] In November 1652, anticipating the regular period by nearly three months, the Council was again re-elected upon a similar principle, for the fifth and last time.[m]

But on April 20, 1653, Oliver Cromwell, who had always been one of the Council of State, from its first institution, having forcibly put an end to the Rump Parliament, and established himself as military dictator, went to the Council of State, who were assembled at their customary place of meeting, at Whitehall, and informed the assembled members that their official existence had terminated, inasmuch as the Parliament from whence their authority had been derived was defunct.[n] Thus ignominiously expired the famous Council of State, which had ruled England with singular vigilance and success for about four years and a quarter. Lacking the stability which the authority and influence of a constitutional monarchy can alone convey, the statesmanship and fidelity

Cromwell.

[k] Bisset, vol. i. pp. 118-123; vol. ii. pp. 77, 293, 377, 386.
[l] *Ibid.* vol. ii. pp. 146, 234.
[m] *Ibid.* p. 369.
[n] *Ibid.* p. 467.

to the trust committed to them displayed by these eminent men failed to preserve them from overthrow, and they became the easy prey of an unscrupulous usurper.

Cromwell's council.

In lieu of this able and influential body, that had steadily refused to co-operate with Cromwell in his ambitious designs,[o] a phantom council was set up, consisting of seven members, six of whom were military men, to act as Cromwell's nominal advisers. But this was a mere 'barrack-room council,' entirely dependent upon Cromwell himself.[p] Subsequently the dictator convened a Council of State, which included eight officers of high rank and four civilians; but the latter served merely as a convenient screen, and the body continued to be, to all intents and purposes, a military council.[q] When, in December 1653, Cromwell accepted the office of Protector of the Commonwealth, he consented to receive from Parliament a council of fifteen persons, to be appointed by statute, with power, by advice of the Council, to increase their number to twenty-one. But he only waited until he was firmly seated upon the presidential chair, to proceed to act, in most important matters, without an order of council, and without, as it would seem, even consulting his legal advisers.[r] The several parliaments convened by Cromwell during his protectorate proved for the most part refractory and unmanageable; and it was entirely owing to his own extraordinary vigour and administrative skill, that his government achieved the measure of success which, especially in the foreign relations of England, has been generally and deservedly associated with his name.[s] Cromwell's dictatorship lasted for five years, when it was ended by his death, which occurred on September 3, 1658. After a brief period of anarchy, the nation, tired of intestine strife, gladly welcomed the restoration of the monarchy.

Restoration of the monarchy.

[o] Bisset, vol. ii. p. 452.
[p] *Ibid.* pp. 475, 476.
[q] Forster, British Statesmen (Cromwell), vol. vii. p. 129.
[r] *Ibid.* p. 231, *n.*
[s] See Goldwin Smith's lecture on Cromwell in his 'Three English Statesmen' (London, 1867).

With the accession of Charles II. a new and transition period began, during which the Parliament continued to increase in strength and influence, while the old antagonisms between the ministers of the crown and the House of Commons were revived with all their former bitterness. The inveterate misgovernment of the restored line of Stuarts finally brought about the Revolution of 1688, an event which not only produced a change of dynasty, but was the means of confirming our national liberties, and placing them upon a more secure foundation. By the introduction of the king's ministers into Parliament at this epoch harmonious relations were at length established between the crown and the legislative bodies, and the old abuses of prerogative government were abolished for ever.

Revolution of 1688.

In reviewing the history of the English Constitution from the Norman Conquest until the accession of William of Orange, certain points appear deserving of especial mention. Firstly, that the seeds of the present political system of Great Britain were sown in the earliest days of our existence as a nation, and have gradually developed into their present shape. Secondly, that the responsibility of advising the crown in all affairs of state belonged originally to the Privy Council, an institution which is as old as the monarchy itself. Thirdly, that the reigning sovereign has always, and especially when the Privy Council was a numerous body, selected, and by his prerogative had a right to select, certain persons of that council, in whom he could especially confide, and by whose advice he more particularly acted. So that it may be said that at no period has the king of England been without sworn advisers who could be held responsible for all his public acts. Fourthly, that the authority and jurisdiction of the Privy Council has been made from time to time the subject of parliamentary regulation; but that, nevertheless, under prerogative government, the responsibility of ministers to Parliament was so difficult to enforce, that, except in the

Development of our national polity.

case of high crimes and misdemeanours, which could be punished by impeachment, it was virtually inoperative; and therefore the principle of responsibility could only be applied to the ordinary conduct of public affairs by a resort to the extreme measure of withholding the supplies. Fifthly, that the want of a cordial understanding between the sovereign and the legislative assemblies was the fruitful source of dissension and misgovernment, which led, in 1649, to the overthrow of the monarchy, and in 1688 to the transference of the crown to a prince of the House of Orange, who was 'called in to vindicate practically those maxims of liberty, for which, in good and evil days, England had contended through so many centuries.'[t] And, lastly, that the attempt under the Commonwealth, to establish a Council of State which should reflect the opinions of the House of Commons, and be composed of the most prominent and influential members of that body, however promising at the outset, speedily and entirely failed, from the lack of that element of stability which the authority and influence of a constitutional monarch can alone supply.[u]

Growth of constitutional government.

It is also noticeable, that even during the reign of the Tudor sovereigns, when the power of the crown was predominant over everything, and Parliament was weak and subservient, principles were at work which ultimately tended to the further advancement of constitutional government. It was then that the great offices of state began first to assume form and method, and the complex machinery of administration to settle into something like its modern aspect. The Secretaries of State, originally mere clerks appointed to do the king's bidding, became by degrees potent functionaries, with certain defined powers and responsibilities. The office of Chancellor, too, was at this period brought nearly to its present shape. That of Lord High Treasurer, or First Commissioner of the Treasury, and that of Lord High Admiral, or First Commissioner of

[t] Taylor, Book of Rights, p. 211.

[u] See *ante*, vol. i. pp. 201–205.

the Admiralty, came to be then of fixed appointment and establishment. Thus, instead of the arbitrary and irregular selection of early times, the principal officers of state were duly appointed to discharge the functions of administration, and to advise the sovereign in the government of the realm. The persons appointed by the king to fill these posts, if not already of the Privy Council, were invariably added to that dignified assembly; and as the most trusted servants and advisers of the crown, they formed the nucleus of the confidential council, which was afterwards known as 'the Cabinet.' This powerful governing body, heretofore a pliant instrument in the hands of the reigning monarch, was made responsible to Parliament by the Revolution of 1688. The Bill of Rights, while it left unimpaired the just rights and privileges of the crown, rebuked the excessive claims of prerogative, redressed the grievances of the people, gave vigour and certainty to the efforts of Parliament, secured its independence, and recognised its inquisitorial functions, so that thenceforth it was free to assume that watchful oversight and control over the administration of public affairs, which is now acknowledged to be its peculiar and most important vocation.[v]

The Cabinet made responsible to Parliament.

[v] See Mr. Adam's speech, Parl. Deb. vol. xvi. pp. 2****—7****.

CHAPTER II.

THE PRIVY COUNCIL, UNDER PARLIAMENTARY GOVERNMENT.

Its present position and functions.

BEFORE entering upon the separate history of the Cabinet Council, it is needful that we should point out the place which is assigned by the Constitution to the Privy Council under parliamentary government.

Since the introduction of the important changes in our political system consequent upon the Revolution of 1688, the Privy Council has dwindled into a mere department of state, of comparative insignificance, so far as the actual direction of public affairs is concerned, when contrasted with its original authoritative and preeminent position. Its judicial functions, heretofore so formidable, are now restrained within very narrow limits. The power of taking examinations and issuing commitments for high treason, is the only remaining relic of its ancient authority in criminal matters. It continues to exercise an original jurisdiction in advising the crown concerning the grant of charters, and it has exclusively assumed the appellate jurisdiction over the colonies and dependencies of the crown which formerly appertained to the Council in Parliament. But, ever since the Revolution, it has been the appropriate duty of Parliament, either directly or indirectly, to afford redress in all cases wherein the common law fails to give relief.[a]

In theory, however, the Privy Council still retains its ancient supremacy, and, in a constitutional point of view, is presumed to be the only legal and responsible Council of the crown. All formal acts of sovereignty must be

[a] Palgrave, King's Council, pp. 110, 125.

performed through the instrumentality of this august body, and Cabinet ministers themselves derive their authority and responsibility, in the eye of the law, from the circumstance that they have been sworn in as members of the Privy Council.

How appointed.

As at present constituted, the Privy Council is an assembly of state advisers, unlimited in number, and appointed absolutely (without patent or grant) at the discretion of the sovereign, who may dismiss any individual member, or dissolve the whole Council, at his pleasure. Several instances are recorded of the names of privy councillors being struck off the lists by the king's command, for conduct that had displeased the sovereign,[b] the last of which occurred in 1805.[c] No qualification is necessary in a privy councillor, except that he be a natural-born subject of Great Britain.[d] Even this disability may be removed, by special Act of Parliament, as in the cases of Prince Leopold, afterwards King of the Belgians, and of His Royal Highness the late Prince Consort.[e]

Formerly the duration of the Privy Council was only

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[b] Haydn, pp. 121–135; Mahon, Hist. of Eng. vol. iv. p. 411.—The name of Charles James Fox was struck out of the Privy Council in 1798, upon the advice of Mr. Pitt, on account of an intemperate and seditious speech at a club dinner. (Jesse, Life of George III., vol. iii. p. 194; Russell's Life of Fox, vol. iii. p. 168.) Upon the formation of his second administration, in 1804, Mr. Pitt urged the king to readmit Mr. Fox to the Council Board, that he might enter the Cabinet, but his Majesty peremptorily refused. But in January 1806, after Pitt's death, the king yielded to the necessity of the case, and upon the advice of Lord Grenville, sanctioned the readmission of Mr. Fox into his councils. —*Ibid.* pp. 330, 349.

[c] In the case of Lord Melville, on account of alleged malversations in office, and in anticipation of an Address to the King from the House of Commons, that his name might be erased from the list of Privy Councillors, and that he be dismissed from the royal presence for ever. (Stanhope's Pitt, vol. iv. pp. 283–285, 294.) His lordship was afterwards resworn of the Council, having been acquitted of the charges preferred against him. —Haydn, p. 135.

[d] This restriction was imposed by the Act 1 Geo. I., stat. 2, c. 4. In 1700 the House of Commons addressed King William III., to request that no foreigner, Prince George alone excepted, might be admitted to the Privy Council. But the king was determined not to receive this address, and immediately prorogued Parliament without a speech from the throne.—Macaulay, Hist. of Eng. vol. v. p. 286.

[e] By 56 Geo. III. cc. 12, 13; by 3 & 4 Vict. cc. 1 and 2.

during the lifetime of the sovereign, but it is now continued for six months longer (by Stat. 6 Anne, c. 7), unless dissolved by the new monarch. But, according to present usage, the privy councillors of the preceding reign are resworn upon the accession of a new sovereign.

Of whom composed.

The Privy Council ordinarily consists of the members of the Royal Family, the Archbishops of Canterbury and York, and the Bishop of London, the great officers of state and of the household, including, as a matter of course, the President and Vice-President of the respective Committees of Council for Trade and for Education, as well as all those who compose the Cabinet, the Lord Chancellor and the Judges of the Courts of Equity, the Chief Justices of the Courts of Common Law, and some of the Puisne Judges (to assist in the business of the Judicial Committee), the Ecclesiastical and Admiralty Judges, and the Judge Advocate, the Speaker of the House of Commons, the Ambassadors and principal Ministers Plenipotentiary, the Governors of some of the principal Colonies, the Commander-in-Chief, the First Lord of the Admiralty, and occasionally a junior Lord of the Admiralty. The Lord Advocate for Scotland, though styled, by usage, right honourable, is not a privy councillor, neither are the Attorney or Solicitor-General for England, because they are liable to be called upon to act as assessors before the Privy Council, or as counsel for the crown. The Irish Attorney-General, however, is generally a member of the Privy Council for Ireland. A seat in the Privy Council is sometimes conferred as an honorary distinction on persons retiring from the public service, who have filled responsible situations under the crown.[1] A privy councillor, although he be but a commoner, is styled 'right honourable,' and has precedence over all knights,

[1] Murray's Handbook, pp. 104–106. Dodd's Manual of Dignities, pp. 257–265, 336, 661.—It is not usual to confer this rank upon Under-Secretaries of State, or Junior Lords, either of the Treasury or Admiralty; but in 1864, Mr. Chichester Fortescue, being then Under-Secretary for the Colonies, was appointed a Privy Councillor.

baronets, and younger sons of barons and viscounts. There is no salary or emolument attached to the office; and the acceptance, by a member of the House of Commons, of a seat in the Privy Council, does not void his election.[g]

Privy Councillors' oaths.

The oath of office, as it was anciently imposed upon every privy councillor,[h] is recorded in 'Coke's Institutes,'[i] and is to the following effect:—1. To advise the king in all matters to the best of his wisdom and discretion. 2. To advise for the king's honour and advantage, and to the public good, without partiality and without fear. 3. To keep secret the king's counsel, and all transactions in the Council itself. 4. To avoid corruption in regard to any matter or thing to be done in Council. 5. To forward and help the execution of whatsoever shall be therein resolved. 6. To withstand all persons who shall attempt the contrary. 7. And generally to observe, keep, and do all that a good and true councillor ought to do unto his sovereign lord.—The oath of office now taken by a privy councillor is given in the Report of the Oaths' Commission, 1867 (p. 84); together with the following declaration, which embodies the substance of the oath, and which it is recommended shall be substituted for it:—'You shall solemnly and sincerely declare that you will be a true and faithful servant unto her Majesty Queen Victoria, as one of her Majesty's Privy Council. You shall keep secret all matters committed and revealed unto you, or that shall be secretly treated of in Council, and generally in all things you shall do as a faithful and true servant ought to do to her Majesty.' Privy councillors must take the Oath of Allegiance, as prescribed by the Promissory Oaths Act of 1868.[j]

[g] Hans. Deb. vol. clxxiv. p. 1197.

[h] Near relations of the sovereign are usually admitted to a seat in the Privy Council without being sworn. —Haydn, Book of Dignities, pp. 120, 129, 137, 145.

[i] 4 Inst. 54.

[j] 31 & 32 Vict. c. 72. And see the Oaths' Commission Report, p. 2, for a declaration enjoined to be made by privy councillors, under the Act 9 Geo. IV. c. 17, sec. 2, to maintain the rights of the Protestant Established Church in England. The taking of this declaration was constructively abolished by the Act 29 Vic. c. 22. But it has still been imposed, and the Commissioners recommend that it should be dispensed with.

Obligation of secrecy.

The obligation of keeping the king's counsel inviolably secret is one that rests upon all Cabinet ministers and other responsible advisers of the crown, by virtue of the oath which they take when they are made members of the Privy Council.[k]

As has been already observed, this secrecy is not a mere personal privilege or protection, either to the sovereign or to the minister, that may be waived by mutual consent; but is based upon constitutional principle and state policy, it being of the first importance that there should be entire freedom and immunity in the confidential intercourse between the crown and its immediate advisers.[l]

Can only be removed by the Sovereign.

Nothing that has passed between the sovereign and his ministers, in their confidential relations with each other, may be disclosed to any other person, or to either House of Parliament, without the express permission of the sovereign.[m] And this permission would only be accorded for purposes of state, as to enable a minister to explain and justify to Parliament his political conduct. It would not be granted for the purpose of enabling Parliament to scrutinise the motives of a political act which was not itself impeachable on public grounds.[n] Neither would it be given with a view to subject the secret counsels of the crown to the review of an ordinary legal tribunal.[o]

The necessity for obtaining leave from the crown to divulge past proceedings, or communications between the sovereign and his confidential servants, applies with

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[k] See *ante*, vol. i. p. 51.—Moreover, the king, as head of the Established Church in England, is at liberty to communicate confidentially with the archbishops or bishops, on any public matter.—Mirror of Parl. 1833, p. 3138.

[l] *Ante*, vol. i. p. 301; *post*, p. 195.

[m] Mirror of Parl. 1831–2, p. 2134.

[n] *Ante*, vol. i. p. 229. In 1810, Lord Chatham, being a member of the existing administration, was examined at the bar of the House of Commons, touching the Walcheren Expedition, which he had personally commanded. (See *ante*, vol. i. pp. 171, 332.) His Lordship answered all questions put to him as a military officer, but declined answering any which concerned matters known to him only as a Privy Councillor, or as a Cabinet minister. —Colchester Diary, vol. ii. p. 235; Parl. Deb. vol. xv. pp. cccxlviii–ccclxxiii.

[o] *Ante*, vol. i. p. 302.

equal force to actual ministers, and to those who have ceased to take part in the royal councils.[p] Moreover, it is not permissible to publish any state correspondence between a sovereign and his minister during a former reign, although referring exclusively to events of a bygone generation, without the sanction of the reigning monarch.[q]

Confidential negotiations.

When negotiations are opened between an existing ministry and leading members of the Opposition, it is not unusual for the crown to grant permission to the Prime Minister to read portions of correspondence that has taken place between the sovereign and his advisers on pending public questions, to such individuals, in order to define more particularly the position of the government in relation thereto.[r] Or the sovereign may himself communicate the same to persons who may be entrusted with the formation of a new administration. But any such communications must always be accounted as strictly confidential.

In May 1832, after the resignation of the Grey ministry, consequent upon their inability to carry the Reform Bill through the House of Lords, the king invited the Duke of Wellington and Lord Lyndhurst to form a new administration. It being indispensable that these noblemen should be put into full possession of the grounds of the retirement of the outgoing ministers, the king communicated to them certain Cabinet Minutes, which showed that the Duke of Richmond, one of the ex-ministers, had differed from his colleagues upon the question at issue between them and the king. The Duke of Wellington was unable to form an administration, whereupon the ex-ministers were recalled. The tone of a debate in the House of Lords at this juncture induced Earl Grey to inform the king that it was 'evident that a very improper use had been made of the

[p] Mirror of Parl. 1831-2, p. 2069; *ibid.* 1834, p. 2645.—In 1844, the members of the existing and of the preceding administrations, solicited and obtained leave from the Queen to disclose all the facts known to them respecting the opening of letters at the Post Office, under royal warrants, before a select committee of the House of Commons.—Hans. Deb. vol. lxxvii. p. 727.

[q] The correspondence between George III. and Lord North, from 1768 to 1783, was 'published by permission of the Queen,' in 1867. And see Lord Grey's Correspondence of the late Earl Grey with King William IV. vol. i. pref. p. v.

[r] Corresp. William IV. with Earl Grey, vol. ii. p. 229.

Alleged breach of confidence.

papers communicated to the Duke of Wellington and Lord Lyndhurst by the king. The Duke of Richmond's dissent was openly stated, and there were other allusions to what had passed between the king and his ministers.'[s] In reply, the king, while expressing his regret at this unauthorised and unwarrantable disclosure of state secrets, justified his own conduct in the matter, contending that under the circumstances in which he had been placed, he was free 'to make such communication to those two peers as he might consider advisable and necessary.'[t] His Majesty was afterwards assured by the Prime Minister and Lord Chancellor Brougham that they 'considered him perfectly justified in the communication he had made to the Duke of Wellington and Lord Lyndhurst of such documents as were necessary to put them in possession of the circumstances which had produced his acceptance of the resignation [of Earl Grey and his colleagues], and his application to them.'[u]

Meetings of Privy Council.

Ever since the separate existence of the Cabinet Council as a governmental body, meetings of the Privy Council have ceased to be holden for purposes of deliberation. At the commencement of the reign of George III., we find this distinction between the two councils clearly recognised—that the one is assembled for deliberative, and the other merely for formal and ceremonial purposes.[v] It is, in fact, an established principle, that 'it would be contrary to constitutional practice that the sovereign should preside at any council where deliberation or discussion takes places.'[w]

At meetings of the Privy Council, the sovereign occupies the chair. The President of the Council sits at the Queen's left hand; it being noticeable that this functionary 'does not possess the authority usually exercised by the president of a court of justice.'[x]

The ceremonial observed at a Privy Council has been thus described by a councillor, upon his first introduction to that august assembly, in 1801: 'We took the oath

[s] Corresp. William IV. with Earl Grey, vol. ii. p. 424.
[t] *Ibid.* p. 430.
[u] *Ibid.* p. 441.
[v] Grenville Papers (anno 1761), vol. i. p. 374.
[w] Earl Granville (Presdt. of Coun.), Hans. Deb. vol. clxxv. p. 251. And see Grey, Early Years of Prince Consort, p. 363, *n.*; Mirror of Parl. 1835, p. 7; Campbell, Chancellors, vol. iv. pp. 317 *n.* 499.
[x] Macqueen, Privy Council, p. ix. *n.*

of allegiance, kneeling, and then the privy councillor's oath was administered to us, standing. After which we kissed the king's hand, and shook hands with each privy councillor present; beginning with the Chancellor, at the king's right hand, then going behind the king's chair to the Lord President on his left, and round the rest of the table.' [Opposite to the king sat the Prime Minister.] 'After we were sworn in, the Clerks of the Council stood on each side of the king, and the Lord President rose up and read a paper of the business to be transacted—viz., proclamations, orders, &c. And upon each article the king read aloud from the margin what his pleasure was to have done, which the Clerk repeated aloud from his duplicate. After the business was finished, the king rose and spoke to all the Council individually, by going round as at the levée.'[y]

The administrative functions which continue to be performed by the Privy Council, as a department of state, will be explained in another chapter.[z]

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[y] Ld. Colchester, Diary and Corresp. vol. i. p. 270; Jesse, Life of Geo. III., vol. iii. p. 276.

[z] See *post*, p. 620.

CHAPTER III.

THE CABINET COUNCIL: ITS ORIGIN, ORGANISATION, AND FUNCTIONS.

HAVING completed our survey of the history of the King's Councils under prerogative government, we proceed to investigate the rise, progress, and present condition of the Cabinet Council, which has become the supreme governing body in the political system of Great Britain.

With a view to the consideration of this subject in accordance with the sequence of historical events, it may be suitably divided into three heads:

I. The origin and early history of the Cabinet.

II. Its later history, and present organisation.

III. Its actual functions, as the supreme governing body, with its relations to the crown and to the executive government.

The relations of the Cabinet to Parliament, and its practical dependence upon the will of the House of Commons, though incidentally and inseparably connected with the topics upon which we are about to enter, will claim more particular attention in a subsequent chapter.

I. The origin and early history of the Cabinet.

A learned though somewhat paradoxical writer of our own day has broadly asserted that 'a private advising council, responsible to Parliament, has at all times been an inseparable part of the institution of the Crown of England.'[a] This statement, if true in the main, must nevertheless be taken with considerable allowance. It may

[a] Toulmin Smith, Parl. Remembrancer (1862), p. 3.

indeed be safely admitted that 'the doctrine that the sovereign is not responsible is doubtless as old as any part of our constitution, and the doctrine that his ministers are responsible is also of immemorial antiquity.'[b]

King's Council in relation to Parliament.

We have indisputable evidence, that 'at an early period Parliament evinced much anxiety respecting the appointments of the members of the King's Council; and although their nomination and removal were vested in the crown, the sovereign seems to have been careful to select those who were acceptable to the Lords and Commons. The king's councillors were frequently appointed and sworn in Parliament; and the regulations by which the Council was governed were often the subject of parliamentary discussion' and enactment.[c] And, so far back as the reign of Richard II. an instance is A.D. 1389. recorded wherein the king's councillors maintained their opinions in opposition to those of their royal master, with an amount of firmness which could scarcely have been exhibited unless they were conscious of a measure of responsibility to the national council for their behaviour in office.[d]

Furthermore, our constitutional annals, from the reign of Richard I., furnish occasional precedents of ministers A.D. 1189. of the crown being called to account, and condemned, in the great council of the realm, for acts of misgovernment, and of petitions being presented to the king in Parliament complaining of mismanagement on the part of his judges and ministers, to which, in the language of an old writer, 'the king very frequently answered, Let any man complain and he shall find remedy; and such answer of the king was a satisfaction to the subjects, for redress of the grievance soon followed.'[e]

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[b] Macaulay, Hist. of Eng. vol. iv. p. 9. And see Allen on the Royal Prerogative, pp. 7, 25.

[c] Nicolas, Proc. P. C. vol. i. p. ii.; Dicey, pp. 12, 17. And see *ante*, pp. 28, 30.

[d] Nicolas, Proc. P. C. vol. i. p. xv. And see Macaulay, Hist. of England, vol. i. pp. 29–32.

[e] Gurdon, History of Parliament, vol. ii. p. 287; Forster, Debates on Grand Remonstrance, pp. 10, 27, 47, 51.

And at a later period, the necessity for obtaining supplies for the service of the crown contributed to induce the sovereign to defer to the expressed wishes of Parliament, and remove from office ministers of state and other functionaries who had given offence by their public conduct.[f]

Ministerial responsibility.

The forms of the Constitution, which required that the king should always communicate with his ministers, and perform every act of state through a privy councillor,[g] afforded to the ancient Parliament of England the means of fixing the responsibility for acts of the crown upon those who had been parties in giving effect to the same, and who were liable to impeachment by the House of Commons for misconduct in office. But, after all, these examples do not betoken the existence, in the case of ministers of the crown under prerogative government, of a responsibility to the country, or to Parliament, in the modern acceptation of the term.[h] The formal introduction of this important principle into our constitutional system was to be the work of another generation.

A select council.

The practice of consulting a few confidential advisers, in preference to, and instead of, the whole Privy Council, was doubtless resorted to by the sovereigns of England from a very early period. Lord Bacon, writing in the reign of James I., upon the use of councillors to kings, cites the example of 'King Henry VII., who, in his greatest business, imparted himself to none, except it were to Morton and Fox.' While affairs of state were, for the most part, debated in the Privy Council, in presence of the king, it naturally happened that some councillors, more eminent than the rest, should form juntos or cabals, for closer and more secret co-operation, or should be chosen by the sovereign as his most intimate

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[f] Forster, Grand Remonst. pp. 10, 27, 47, 51. Hatsell, Precedents, vol. iv. p. 69, &c.

[g] Nicolas, Proc. P. C. vol. i. p. xxxiv.; Dicey, pp. 18, 69. And see *ante*, pp. 10, 29.

[h] See Nicolas, Proc. P. C. vol. vii. p. xiv.

and confidential advisers. These statesmen came to be designated as the Cabinet, from the circumstance of their deliberations being conducted in an inner room, or Cabinet, of the Council apartments in the royal palace. But no resolutions of state, or other overt act of government, were finally taken without the deliberation and assent of the Privy Council, who then, as now, were the only advisers of the crown recognised by law.[1]

First mention of a cabinet.

We first meet with the term 'Cabinet Council,' in contradistinction to that of Privy Council, in the reign of Charles I. Clarendon, in his 'History of the Rebellion,' after describing the condition of the government at the time the great Council of Peers was convened at York by the king, in September 1640, and mentioning that the burthen of state affairs rested principally upon the Archbishop of Canterbury, the Earl of Strafford, and Lord Cottington, proceeds to state that some five or six others being added to them, on account of their official position and tried ability, 'these persons made up the Committee of State (which was reproachfully after called the *Juncto*, and enviously then in court the *Cabinet Council*), who were upon all occasions, when the secretaries received any extraordinary intelligence, or were to make any extraordinary despatch, or as often otherwise as was thought fit, to meet: whereas the body of the Council observed set days and hours for their meeting, and came not else together except specially summoned.'[2] In another place he says the practice then prevailed of admitting many persons of inferior abilities into the Privy Council merely as an honorary distinction, and that thus the Council grew so large that, 'for that and other reasons of unaptness and incompetency, committees of dexterous men have been appointed out of the table to do the business of it.' And he remarks that one of the grounds of Strafford's attainder was a discourse of his 'in the

[1] Hallam, Const. Hist. vol. iii. p. 249.

[2] Clar. Reb. book ii. p. 226 (edit. 1819).

Committee of State, which they called the *Cabinet Council*.'[k] Again, in his 'Autobiography', he mentions that when, after Lord Falkland's death, in 1643, Lord Digby replaced him as Secretary of State, 'he was no sooner admitted and sworn Secretary of State and Privy Councillor, and consequently made of the Junto which the king at that time created—consisting of the Duke of Richmond, the Lord Cottington, the two Secretaries of State, and Sir John Colepepper—but the Chancellor of the Exchequer (Clarendon himself, then Mr. Hyde) was likewise added; to the trouble, at least the surprise, of the Master of the Rolls (Sir J. Colepepper), who could have been contented that he should have been excluded from that near trust, where all matters were to be consulted before they should be brought to the Council-board.'[l]

Unpopularity of cabinets.

The introduction of this method of government by means of a Cabinet was exceedingly distasteful to the whole community. It was one of the innovations against which the popular feeling was directed in the first years of the Long Parliament. The Grand Remonstrance, addressed by the House of Commons to Charles I., in 1641, set forth that such councillors and other ministers of state only should be employed by the king as could obtain the confidence of Parliament.[m] And in the Second Remonstrance, issued in January 1642, complaint is made of 'the managing of the great affairs of the realm in Cabinet Councils, by men unknown and not publicly trusted.'[n]

Cromwell.

During the protectorate of Cromwell, Cabinets were unknown. The government of the country was conducted by the supreme will of the great dictator, assisted by a Council of State, which should at no time exceed twenty-one members, nor be less than thirteen. But public affairs

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[k] Clar. Reb. book iii. pp. 272, 273.
[l] Clar. Autobiog. vol. i. p. 85.
[m] Forster's Grand Remonstrance, 537. And see book vii.
[n] Clar. Hist. Rebellion, book iv. p.

were chiefly transacted by certain committees of Parliament, until it became evident that these committees were assuming too much authority, when the Long Parliament itself was summarily abolished by this mighty autocrat, who was not disposed to submit his will to constitutional restraints. The legislative assemblies subsequently convened by Cromwell were too much under his own control to offer any serious obstructions to his government.

Restoration of the monarchy.

Immediately upon the restoration of monarchy, in 1660, the Privy Council was reconstituted by the king, and resumed its original functions. But the public mind at this period was not in the humour to reopen the difficult question of the relations between the sovereign and Parliament, and Charles II. was too fond of pleasure, and of his own prerogative, to be willing to agree to anything which would encroach upon either. But he was not averse to an attempt to render the Privy Council itself more efficient. For, after the Restoration, the Privy Council 1660. included all those who had been members of the Privy Council of Charles I., amongst whom were many faithful royalists; but there were also some who had espoused the cause of the Parliament. The number of councillors,[mm] and the doubtful loyalty of some of them, rendered the existing body an unsafe and inefficient instrument for the direction of public affairs. Accordingly, at the suggestion of Hyde, the Lord Chancellor, and virtual head of the administration, a plan was devised for the subdivision of the Privy Council into separate committees, to each of which should be assigned a special class of subjects.[nn] This was but the carrying out of a reform already provided for by the regulations of 1553,[o] under which we find, in the reign of James I., a committee of the council 1620. appointed for war, that included several of the king's

[mm] For a list of the Privy Councillors of England from the Restoration to 1850, see Haydn, Book of Dignities, pp. 119-146. And, at the present, Dod's Peerage, &c. 1868, p. 795.

[nn] Lister, Life of Clarendon, vol. ii. p. 6; Cox, Eng. Govt. p. 648.

[o] See *ante*, p. 38.

principal ministers; and another committee for foreign affairs. It was now proposed that there should be a committee for foreign affairs, a committee for admiralty, naval, and military affairs; a committee for petitions of complaint and grievance; and a committee for trade and foreign plantations. Furthermore, that 'if anything extraordinary happens which requires advice, whether in matters relating to the treasury, or of any other mixed nature, other than is afore determined, his majesty's meaning and intention is, that particular committees be in such cases appointed for them as hath been heretofore accustomed; such committees to make their report in writing, to be offered to his majesty at the next council day following. If any debate arise, the youngest councillor to begin, and not to speak a second time.'[p]

Charles II. It is doubtful whether all these committees were actually organised at this time. But the so-called committee for 'foreign affairs,'—which consisted of the Lord Chancellor and five others, mostly his intimate friends and adherents,—took the lead and became in reality a Cabinet Council, to whom alone the king entrusted the secrets of his policy, and wherein was discussed, invariably in the presence of the king, all the most important affairs of state, both foreign and domestic, before they were submitted to a general meeting of the Privy Council. This confidential committee virtually superseded the rest of the Council, who were only consulted on formal occasions. In connection with the formation of this Cabinet, or Cabal,[q] as it was then termed, the king greatly increased the number of the whole Council; and thus

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[p] Cox, Eng. Govt. p. 648.

[q] This designation has been erroneously supposed to have been derived from the initial letters of the members composing the Cabal, in the year 1670 (see Haydn, Book of Dignities, p. 90). But this, in point of fact, was a mere coincidence; as the same term was applied to a former ministry, in 1665. It is a derivation from the Hebrew, originally signifying something secret or mysterious, but gradually extended to include the idea of conspiracy and intrigue. See Pepys' Diary, edit. 1854, vol. iii. p. 328, *n.*; Campbell's Chancellors, vol. iii. p. 191, *n.*; Notes and Queries, vol. v. p. 520.

obtained a valid reason for employing only a select body of his advisers. For Charles II. had an extreme dislike to the formality of long discussions in full Council,[r] adverting to which, in 1679, his Majesty thanked the whole body of his councillors for all the good advices they had given him, 'which,' he added, 'might have been more frequent if the great number of this Council had not made it unfit for the secresy and despatch that are necessary in many great affairs. This forced him to use a smaller number of you in a foreign committee (the Cabal), and sometimes the advices of some few among them upon such occasions, for many years past.'[s]

Of the first ministry of Charles II. we are informed by Clarendon,[t] that 'the Treasurer (Southampton), the Marquis of Ormond, General Monk, with the two Secretaries of State, were of that secret committee, with the Chancellor (Clarendon himself), which, under the notion of foreign affairs, were appointed by the king to consult all his affairs before they came to a public debate.'[u] And Roger North, referring to this period, says that 'the Cabinet Council consisted of those few great officers and courtiers whom the king relied upon for the interior dispatch of his affairs;' and that while 'at first it was but in the nature of a private conversation, it came to be a formal council, and had the direction of most transactions of the government, foreign and domestic.'[v] These Cabinet meetings were holden, for a time, about twice in the week; but after a while, for the greater convenience of the king and his ministers, it became customary to hold them upon Sunday evenings. Every Lord's day, the great officers of state would attend the king to morning service in the royal chapel, and be at hand to wait upon him, in the evening, for consultation on public affairs.[w]

Cabinet meetings.

[r] Dicey, pp. 65, 66.

[s] *Ibid.* p. 66. And see Temple's Memoirs, vol. ii. p. 45, *n.*

[t] Continuation of his Life, p. 27.

[u] And see Thomas, Hist. Public Offices, p. 23.

[v] Life of Lord Guildford, vol. ii. p. 50.

[w] Campbell's Chancellors, vol. iii. pp. 191, *n.* 475. This curious custom

Charles II. was a monarch who coveted the possession of arbitrary power. He therefore naturally preferred to avail himself of the services of a few trusty councillors, whom he could choose from amongst their less pliant colleagues. Hallam tells us that 'the delays and decencies of a regular council, the continual hesitation of lawyers, were not suited to his temper, his talents, or his designs.' And it must be confessed, that the Privy Council, as it was then constituted, was too numerous for the practical administration of government. 'Thus by degrees it became usual for the ministry or Cabinet to obtain the king's final approbation of their measures before they were laid, for a mere formal ratification, before the Privy Council.'[x] Nevertheless, we are assured by Clarendon, who as Lord Chancellor, took an active part in all these proceedings, that the Cabinet 'never transacted anything of moment (his majesty being always present) without presenting the same first to the council-board.' He adds, that while at first they were 'all of one mind, in matters of importance,' yet that after about two years, the king added others to this Cabinet 'of different judgment and principles, both in Church and State,' to himself, whereby his own influence with the king was considerably impaired.[y]

Unpopularity of government.

The 'Cabal' ministry lasted about three years, and was very unpopular. Nor need we wonder at this, for whatever might be the advantages of Cabinet government, the check upon the will of the sovereign which was, to some extent, afforded by a body so numerous and influential as the Privy Council, was lost sight of, if not altogether removed, when the administration was placed in the hands of a secret oligarchy. And should the enormous power entrusted to the Cabinet be abused it would be difficult, if

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of state attendance at church on Sunday mornings, and of the holding of Cabinet Councils every Sunday evening, continued to be observed in the reign of Queen Anne. Campbell's Chancellors, vol. iv. p. 286, 287.

[x] Hallam, Const. Hist. vol. iii. p. 250; Parl. Hist. vol. v. p. 733.

[y] Lord Clarendon's Address to House of Lords upon his impeachment, in 1667. State Trials, vol. vi. p. 376.

not impossible to call them to account. The 'Cabal' ministry was broken up in 1674. Sir Thomas Osborne, soon after created Earl of Danby, then became chief minister, and retained office until 1678. The history of England at this period is that of a continual struggle between the crown and the Commons, during which time the executive was never more profligate and anti-national, or representative government more factious and corrupt.[x] The Earl of Danby, being impeached by the Commons for treasonable practices, was sent to the Tower. For a short interval public affairs were in a miserable plight. The Parliament became daily more and more violent; while the king's authority was so low, that it seemed equally difficult to dissolve Parliament, or to carry on the government without a dissolution.

Sir W. Temple's scheme.

At this juncture his majesty applied to Sir William Temple, one of the foremost statesmen of the age, and by his advice was induced to accept a new scheme of administration. This was nothing less than an ingenious attempt to combine the advantages of the old system of government by a council with those of the modern device of government by means of a Cabinet, selected from amongst the principal parliamentary leaders. As a necessary preliminary, the existing Privy Council was dissolved, and a new one appointed, which consisted of only thirty persons. Of these, one-half were selected from the chief officers of the crown and household, including also the Archbishop of Canterbury and the Bishop of London. The remaining moiety were chosen from among the leading members of both sides of the two Houses of Parliament, without office, but being required, as an indispensable qualification, to be possessors of large estates. This Council was presided over by a Lord President, who however had neither the authority nor the influence of a Prime Minister. Otherwise, this new-fangled Privy Council bore some resemblance to a modern Cabinet; but with the all-

[x] Dicey, p. 66; Knight, Hist. of Eng. vol. iv. ch. 20.

important difference, that there was no agreement that all the councillors should concur in carrying into effect, and supporting in Parliament, the decision of the majority upon questions of public policy; or even that they should abstain from parliamentary opposition to each other.[a] And although the goodwill of Parliament was sought to be conciliated at the first formation of the new council, its continued existence was not made to depend upon its retaining that goodwill.

In the selection of persons to compose this council, Temple's idea was that the leading interests of the whole community should be represented therein. Thus, the Archbishop of Canterbury and the Bishop of London were 'to take care of the Church;' the Lord Chancellor and the Chief Justice to 'inform the king well of what concerns the laws;' the peers and landed gentry, by their large possessions, to be fit representatives of the national wealth, so that 'at the worst, and upon a pinch' they might 'out of their own stock furnish the king, so far as to relieve some great necessity of the crown.'[b]

On April 21, 1679, the king nominated his new Council, and in person announced its formation to Parliament, informing them that he had made choice of such persons as were worthy and able to advise him; and that he was resolved, in all his weighty and important affairs, next to the advice of his great council in Parliament (which he should very often consult with), to be advised by them.[c] But though planned for the express purpose of conciliating the approbation of Parliament, or at any rate, of the constituent body, should a dissolution of Parliament become necessary,[d] this novel scheme of administration wholly failed to obtain public confidence. And with reason, for it aimed at reconciling two inconsistent principles; the appointment of some ministers solely because

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[a] Temple's Memoirs, by T. P. Courtenay, vol. ii. pp. 34–74.

[b] *Ibid.* p. 34; Dicey, p. 66.

[c] Lords' Journal, vol. xiii. p. 530.

[d] Temple's Memoirs, vol. ii. p. 34.

they were acceptable to the king, and of others merely for the sake of their influence in Parliament. It was moreover of too unwieldy dimensions for a governing body. For there was to be no interior Cabinet; but all the thirty were to be entrusted with every political secret, and summoned to every meeting.[e] Notwithstanding its apparent plausibility, and the welcome accorded to it by some of the most eminent statesmen of the day, this elaborate device was of very short-lived duration. Parliament received it coldly, and no wonder, since on Temple's own admission, the authority of the new Council was designed to counterbalance the increasing influence of the legislature. Internal dissensions arose in the Council itself, through the introduction of certain members who were opposed to the court; and at last Temple dealt a finishing stroke to his own creation, by consenting to form an interior Council therein; though the essence of his scheme had been that the whole body should always be consulted. After the failure of this notable project, the king, in open disregard of his solemn engagement to the contrary, sought thenceforth to govern according to his own caprice.[f]

Failure of Temple's scheme.

Ephemeral and impracticable as it was, Temple's project is not without interest, as it serves to mark an important stage in the transition from government by prerogative, administered through the whole Privy Council, and parliamentary government through the instrumentality of a Cabinet.

During the rest of the reign of Charles II., as well as during the short and stormy career of his unfortunate successor, the king's Council shared the odium and unpopularity of their royal master. James II. introduced into his Council several Roman Catholics, who were naturally regarded by the nation with mistrust. But the great blot in its composition continued to be that which was pointed out in the Grand Remonstrance, namely, that it did not

Continued unpopularity of the Council.

[e] Macaulay, Hist. of Eng. vol. i. p. 241.

[f] Dicey on the Privy Council, p. 67.

consist of men in whom Parliament was willing to repose its confidence. Its proceedings, moreover, were conducted with such secresy, that it was impossible to determine upon whom to affix the responsibility of any obnoxious measure. After a very brief duration, James's unpopular reign terminated in his abdication and flight. With the Revolution which placed the house of Orange upon the throne of England, a new era commenced, full of promise to the friends of constitutional government. There was happily no need, on this occasion, for new fundamental laws to be enacted, or for another constitution to be framed. Important amendments to existing laws were doubtless required, and further securities to protect the liberty of the subject from aggression; but the effort to secure these benefits was by no alteration of the established polity, but by restoring our ancient constitution to its first principles, and reviving a spirit of harmony between the crown and Parliament.[g]

The Revolution.

During the earlier part of the reign of William III., however, nothing was done to improve the efficiency and accountability of the Privy Council, beyond the selection of men to form part of the same in whom the king himself could thoroughly confide. Relying upon his personal popularity, and unwilling to share his authority with others, the king was reluctant to make any change which should lessen his own power. At length an opportunity presented itself whereby the Parliament could exact from the crown additional guarantees for constitutional rights. It was necessary to make legislative provision for the succession of the crown, in the Protestant line, in default of issue of the reigning sovereign, and of the Princess Anne, the heiress presumptive, by acknowledging the right of the Princess Sophia of Hanover, and her issue, being Protestants, to inherit the throne. Parliament took advantage of this juncture to obtain the grant of further liberties, which

Subsequent condition of the Council.

[g] Macaulay, Hist. of England, vol. ii. pp. 657–662; *ante*, vol. i. p. 3.

should take effect upon the accession of the house of Hanover.

'In the Act of Settlement (12 and 13 William III. c. 2) a clause was introduced—aimed at the existence of the obnoxious 'Cabinet,' which continued to be unpopular in Parliament[h]—enacting that from and after the time aforesaid, 'all matters and things relating to the well-governing of this kingdom, which are properly cognisable in the Privy Council by the laws and customs of this realm, shall be transacted there, and all resolutions taken thereupon shall be signed by such of the Privy Council as shall advise and consent to the same.' But this measure, as we have already noticed in our introductory chapter,[i] proved abortive, and was repealed before it went into operation.[j] It was founded upon error,[k] as it endeavoured to enforce the responsibility of ministers without its natural correlative, namely, their recognised presence in the two Houses of Parliament to render an account of their stewardship. Act of Settlement.

Meanwhile, the House of Commons, having proved its strength, was rapidly acquiring increased power. But for the want of proper control, it was a prey to caprice, indecision, endless talking to no purpose, and factious squabbling. 'The truth was that the change which the Revolution had made in the House of Commons, had made another change necessary; and that other change had not yet taken place. There was parliamentary government: but there was no ministry.'[l] In other words, although the chief offices in the government were filled by persons who sat in Parliament, yet these offices 'were distributed not unequally State of the House of Commons.

[h] See Parl. Hist. vol. v. pp. 722–733.

[i] See *ante*, vol. i. p. 43.

[j] By 4 Anne, c. 8, sec. 24.

[k] The point specially aimed at by the regulation requiring members of the Privy Council to sign their resolutions was, evidently, in order to identify those who were responsible for any given act or proceeding. Cox, in his Institutes (pp. 244–246), discusses this question, and shows that while in some cases it might be possible for a minister, by extreme caution, to prevent the existence of any direct evidence of his advice to the crown, it is probable that, in matters of moment, his papers and official acts would generally betoken the nature of his counsels.

[l] Macaulay, vol. iv. p. 434.

between the two great parties,' and 'the men who held those offices were perpetually caballing against each other, haranguing against each other, moving votes of censure on each other, exhibiting articles of impeachment against each other; and, as a natural consequence, the temper of the House of Commons was wild, ungovernable, and uncertain.'[m]

First parliamentary ministry.

In this juncture, a plan was happily devised which, while it was calculated to conserve the weight and influence that rightfully appertained to the crown in the conduct of public business in Parliament, also afforded the means of successfully controlling its turbulent majorities, and of permanently conciliating their goodwill. By the advice of Sunderland, the king resolved to construct a ministry upon a common bond of political agreement, the several members of which being of accord upon the general principles of state policy, would be willing to act in unison in their places in Parliament.[n] Gradually, as opportunity offered, the Tory element in the existing administration was eliminated, so that, at last, its political sentiments were in harmony with the prevailing opinions of the majority of the House of Commons. When this had been accomplished, the servants of the crown in Parliament possessed the double advantage of being the authorised representatives of the government, and the acknowledged leaders of the strongest party in the popular chamber. By this happy contrivance the Parliament, through whose patriotic endeavours the monarchy had been restored, and the liberties of the people effectually consolidated, was recognised as 'a great integral part of the Constitution, without which no act of government could have a real vitality.'

Before the Revolution, as has been already noticed,[o] Parliaments were wont to be considered as a troublesome incumbrance, whose chief use was to vote money for the service of the crown. It had been the continual endeavour

[m] Macaulay, vol. iv. p. 437.
[n] *Ibid.* pp. 438, 443-446.
[o] *Ante*, p. 41.

of the Stuarts to dispense, as far as possible, with the aid of Parliaments. On the other hand, the experience of the Civil War, and of the earlier years of the Commonwealth, had proved that the attempt of the legislative power to rid itself of the restraints of a monarchy, was fraught with peril to the State. 'The sagacity of Cromwell saw that a monarchy, or "something like a monarchy," in conjunction with a Parliament, was best adapted to the whole structure of the English laws, and best suited to the character of the English people.[p] How to bind these hitherto opposing elements together, in a cordial and intimate union, was a problem which the great Protector was unable to solve. But this difficult question was about to be determined by one who combined all Cromwell's energy and foresight with a deeper regard for constitutional obligations.

Such a thing as the formal introduction of the king's ministers into Parliament, for the purpose of representing the crown in the conduct of public business therein, had been previously unknown in England. It is true that, from an early period, various ministers of state, and subordinate officers of the executive government, had obtained entrance, from time to time, into the House of Commons; there being no legal restriction to prevent any number of servants of the crown from sitting in that assembly. The presence of these functionaries served, no doubt, to increase the influence of the crown over the deliberations of Parliament; but they occupied no recognised position in the popular chamber; the House, in fact, merely tolerating their presence, and often entertaining the question whether they should be permitted to retain their seats or not.[q]

Placemen in House of Commons from an early period.

We read that 'in Henry VII.'s time, and Henry VIII.'s, ministers of state, officers of the revenue, and other courtiers, found an account in creeping, through boroughs,

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[p] Knight, Pop. Hist. of Eng. vol. iv. p. 449.

[q] Hatsell, Precedents, vol. ii. pp. 22, 42.

into the House of Commons.'[r] As a natural result of this proceeding, it is mentioned, in a debate on placemen in Parliament, in 1680, that in the 20th year of Henry VIII., there was an Act passed to release to the king certain loans he had borrowed, which Act 'was much opposed, but the reason that is given why it passed is, because the house was mostly the king's servants; but it gave great disturbance to the nation.'[s]

Ministers in the House of Lords

The presence of the king's ministers in the House of Lords was a matter of course, and unavoidable, because the chief ministers of state were generally chosen from amongst the peers of the realm, who have always been regarded as the hereditary councillors of the crown. But though they were thereby in a position to do the king much service, by furthering his plans in Parliament,[t] we have no proof that they were authorised to represent the government in their own Chamber, in the modern acceptation of the term. They would naturally address their brother peers with greater authority, when holding high offices of state; but this could not materially affect their relations towards the House itself, so long as parliamentary government was unknown, because it is essential to that system that there should be official representation in both branches of the legislature, and especially in the House of Commons. Even had it been possible for a parliamentary government to have been administered through the House of Lords alone, 'the effect would have been the depression of that branch of the legislature which springs from the people, and is accountable to the people, and the ascendancy of the monarchical and aristocratical elements of our polity.'[u] Such, indeed, was the actual result until after the commencement of the present century, when it became customary for a fair proportion of Cabinet ministers to sit in the House of Commons.[v] Until then the members of the

[r] Gurdon, Hist. of Parls. vol. ii. p. 355.
[s] Parl. Hist. vol. iv. p. 1269.
[t] Gurdon, Hist. of Parls. vol. ii. p. 366.
[u] Macaulay, Hist. of Eng. vol. iv. p. 340.
[v] See *post*, p. 251.

House of Lords evinced a decided superiority over those of the Commons in education, refinement of manners, and liberality of sentiment, as well as in the possession of political power.[w]

Privy Councillors in House of Commons,

We are unable to determine when Privy Councillors were first permitted to sit in the House of Commons. It was alleged in a debate in the House in 1614, that 'anciently' no 'Privy Councillor, nor any that took livery of the king,' was 'ever chosen' to that assembly. But we have already noticed their presence in the Commons in the reigns of Edward VI. and his royal sisters (1547–1601). And in 1614 (*temp.* James I.), it being remarked that several Privy Councillors had got seats, no one seemed desirous of removing them.[x]

and other officials.

In the event of members of the Lower House being appointed to offices of state, or places of profit under the crown, it appears to have been the practice, prior to the Revolution of 1688, to permit them to continue in the undisturbed possession of their seats, unless the nature of their employment required a continued residence abroad, as in Ireland, or in the colonies; or unless they were assistants or attendants at the House of Lords; as in the case of the judges and crown officers. But unless the House of Commons were specially moved by the crown to take action in the premises;—or unless the enforced and unavoidable attendance of any such member in the House of Lords, or elsewhere upon the king's service, by virtue of the office conferred upon him, justified the House in declaring his seat vacant,—there does not seem to have been any lawful method of avoiding the seat of members so appointed. And even where a new writ might, in conformity with precedent, have been properly ordered, it was not invariably done.

Thus;—in 1575, it was resolved by the House of Commons, that any member being 'in service of Ambas-

[w] See Buckle, Hist. of Civilization, pp. 409–411.

[x] Parl. Hist. vol. i. p. 1163.

sade,' shall not in anywise be amoved from his place, nor any other be elected during such term of service.[y] In 1606, the Speaker informed the House that he had received a letter from the Lord Chancellor, stating that since the previous session, his majesty had appointed certain members of the House on special services: to wit one, as Chief Baron of the Exchequer in Ireland; another as Treasurer at War in Ireland; others, as ambassadors to France and Spain, respectively; and another as Attorney-General; and desiring 'to know the pleasure of the House whether the same members were to be continued, or their places supplied with others.' The matter was referred to a committee of privileges, who were charged to consider also the case of a member who had been appointed Master of the Ordnance in Ireland, and of another, who had been sent on a foreign embassy. Upon the report of this committee, the seats of the Chief Baron, Treasurer, and Master of the Ordnance in Ireland, who were presumed to hold their patents for life, were declared void, and new writs ordered; but the ambassadors were permitted to remain. The case of the Attorney-General gave rise to much difference of opinion; and finally, the House evaded any direct decision thereon, by refusing to allow a question to be made of it.[z] In 1609, a new writ was ordered in the case of a member appointed to be governor of a colony in America.[a] With regard to members appointed to be judges of the courts of law in England, the question was raised in 1604, whether such persons 'ought to have place in the Higher House, or sit here during the same Parliament;' but no resolution was come to by the House at that time.[b] In 1605, it was resolved, upon a report from the committee of privileges, that two members of the House of Commons, 'being Attendants as Judges in the Higher House, shall not be

Ineligibility of Judges.

[y] Commons' Journal, vol. i. p. 104.
[z] *Ibid.* pp. 315, 323.
[a] *Ibid.* p. 393.
[b] *Ibid.* p. 248. Thorp, a Baron of the Exchequer, was Speaker of the House of Commons, 31 Henry VI. Com. Dig. Parl. D. 9.

recalled.'[c] In 1620, a motion was made for a new writ in place of a member appointed Chief Justice of the King's Bench, but the decision thereon is not recorded.[d] And in 1649, it was resolved, That the several Judges of the Upper Bench, Common Pleas, and Public Exchequer, that are or shall be members, who have accepted, or shall accept, of the said places, be excused their attendance in this House whilst they shall execute the said places.[e] But there is no order for the issue of a new writ in any such cases. It is not until after the Restoration of Charles II. that we find it expressly stated that new writs were issued in the case of members of the House of Commons appointed to the bench in England.[f]

The foregoing are the only instances which are to be found in the Journals of the House of Commons,—previous to the year 1694, when the first Act of Parliament was passed upon the subject,—of the issue of new writs upon the appointment of members to office under the crown: with the exception of the case of the Attorney-General, which, as we have seen, was specially commended to the consideration of the House by the king, in 1606; he being one of the officers who were (and still, as a matter of form, continue to be) summoned, at the beginning of every Parliament, by writ under the great seal, to attend as an assistant and adviser in the House of Lords.[g] On this occasion, however, the House declined to decide the question either way, and the Attorney-General ventured

Attorney-General.

[c] Commons' Journal, vol. i. p. 257.

[d] *Ibid.* p. 513. In a previous case, that of Mr. Bromley, appointed a Baron of the Exchequer in 1609, the Committee of Privileges reported in favour of the issue of a new writ, but the entry of the action of the House thereon is too vague to enable us to determine the result. *Ibid.* p. 392. In the instance of 'Sir W. Gray, made a baron,' in 1623, when a new writ was ordered, the General Index to the Commons' Journals (vol. i. p. 423), is incorrect in placing the entry under 'Judges.' This gentleman, who represented the county of Northumberland in the House of Commons, vacated his seat upon his elevation to the peerage, under the title of 'Baron Grey, of Werke,' and not by being appointed a judicial baron.

[e] Com. Journ. vol. vi. p. 305.

[f] *Ibid.* vol. viii. pp. 80, 104, 187, 510, 535.

[g] Macqueen, House of Lords, pp. 35, 42.

to take his seat 'by connivance.' But in 1614, after a committee to search for precedents, it was resolved that 'Mr. Attorney-General Bacon [the famous Sir Francis Bacon, who previous to his election had received this appointment] remain in the House for this Parliament, but never any Attorney-General to serve in the Lower House in future.' It was argued in the debate upon this case that heretofore 'no Attorney-General was ever chosen.' In 1620, in 1625, and again in 1640, this order excluding the Attorney-General from the House was strictly enforced, and new writs were issued when members were appointed to that office.[h] In 1661, at the request of the House of Commons, leave was granted by the House of Lords for the Attorney-General to repair to the House of Commons, for the purpose of giving information 'concerning some business wherein his majesty is concerned.'[i] Sir Heneage Finch, afterwards Lord Nottingham, was the one on whose behalf this rule of exclusion was abandoned. He was promoted from the office of Solicitor-General to that of Attorney-General in 1670, whilst a member of the House of Commons, and he was allowed to retain his seat without question.[j] Since then this functionary has usually been one of the most prominent and important members of the Lower House.

Solicitor-General.

The Solicitor-General was more fortunate. Twice, in 1566, and in 1580, he was 'adjudged to be a member,' notwithstanding his holding this post, and was directed to leave the House of Lords, where he had been summoned as an 'Attendant,' and take his seat in the Nether House.[k] And no question has ever been raised as to his eligibility for a seat in the House of Commons.

Gradually, under the Tudor dynasty, we find the chief ministers of state, having seats in Parliament, beginning

[h] General Index, Commons' Journals, vols. i.–xvii. (published in 1852) p. 422.

[i] Lords' Journals, vol. ii. p. 290.

[j] Rogers' Law of Elec. ed. 1859, p. 186, *n.*; Campbell, Lives of the Chancellors, vol. iii. p. 390.

[k] General Index, Commons' Journals, vols. i.–xvii. p. 425; Parl. Hist. vol. i. p. 1163.

to be employed, to some extent, as mouth-pieces of the crown, to make known the will of successive sovereigns to their faithful Commons. The Commons, too, availing themselves of the presence in their midst of certain crown officers, began at this era to make use of them as channels for conveying to the crown the expression of their particular wants.

Ministers in Parliament under the Tudor monarchs.

Thus, in the reign of Queen Mary, a curious circumstance is recorded in the Commons' Journals, which illustrates the position occupied by ministers of the crown towards Parliament at that period:

On November 7, 1558, her majesty sent for the Speaker of the House of Commons, and ordered him to lay before the House the ill condition the nation was in by the war with France; but the Commons were so dissatisfied, that they granted no subsidy. So on the 14th November, the Lord Treasurer, Lord Chancellor, and several other peers, went to the Commons' House, and sat 'in the Privy Councillors' place there,' and showed the necessity for a subsidy to defend the nation against the French and Scots, and then they withdrew; upon which the Commons immediately entered into debate about the matter recommended to their consideration by the Lord Chancellor (who was the mouth-piece of the Lords), and spent that day and the two following, without coming to any resolution. On November 17, the death of the queen occurred, and the session was abruptly terminated.[1] A.D. 1558.

In the reigns of Edward VI. and Queen Elizabeth, the members of the Privy Council sitting in 'the Nether House,' are mentioned as being ordinarily employed to communicate orders of the House to the king; and in the Journals reference is made to certain officers of state, *e.g.*, the Treasurer of the Household, the Comptroller of the Household, and the Secretary of State, as having seats in the House of Commons, and being deputed to convey

[1] Gurdon, Hist. of Parlts. vol. ii. p. 383; Commons' Journals, vol. i. p. 52.

messages between the sovereign and that chamber:[m] and we find all Queen Elizabeth's privy councillors, who had seats in the House of Commons, joining in opposing a motion for the release of some members of the House whom the queen had imprisoned, on the ground that 'as her majesty had committed these persons for reasons best known to herself, it was not to be doubted that she would, of her gracious disposition, shortly release them of her own accord.'[n]

James I. Again, in the reign of James I., we find the Chancellor of the Exchequer, the Secretary of State, and the Chancellor of the Duchy of Lancaster, sitting as members of the House of Commons, and employed in the transmission of messages, and other communications on the business of Parliament, between the House and his majesty.[o]

But, in addition to these high functionaries, many minor office-holders also contrived to get elected to the House of Commons, and they united their strength to further the interests of the court, as opposed to those of the Parliament. We find an old member of the Parliament of

Charles I. Charles I. declaring,—'It was my fortune to sit here a little while in the Long Parliament; I did observe that all those who had pensions, and most of those that had offices, voted all of a side, as they were directed by some great officer, as exactly as if their business in this House had been to preserve their pensions and offices, and not to make laws for the good of them that sent them here. How such persons could any way be useful for the support of the government, by preserving a fair understanding between the king and his people, but, on the contrary, how dangerous to bring in arbitrary power and Popery, I leave to every man's judgment.'[p] Accordingly, it was one of the first measures of the republican party, when they became su-

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[m] Commons' Journals, vol. i. pp. 8, 9, 55, 56, 61.

[n] Parry's Parls. p. 233.

[o] Gurdon, Hist. of Parls. vol. ii. pp. 428, 443, 461, 462, 473, 474.

[p] Sir F. Winnington, Parl. Hist. vol. iv. p. 1265.

preme in the Long Parliament, to pass the 'self-denying ordinance,' in 1644, by which it was enacted, 'That no member of either House should have or execute any office or command, civil or military.'[pp] After the restoration of the monarchy, a Bill to prevent members of the House of Commons from taking upon them any public office was presented and read twice, in 1675, but it was afterwards rejected on division.[q] And in 1679, a Bill to provide that when any member of this House is preferred by the king to any office, or place of profit, a new writ shall immediately issue for electing of a member to serve in his stead, was ordered,[r] but never presented. At length, on December 30, 1680, in the 32nd year of the reign of Charles II., it was Resolved by the House of Commons, *nem. con.*, That no member of this House shall accept of any office, or place of profit, from the crown, without the leave of this House; or any promise of any such office, &c., during such time as he shall continue a member of this House; and that all offenders herein shall be expelled this House.[s] This resolution, however, can only be regarded as an expression of opinion, indicative of a growing change in the public mind in regard to the purity and free action of Parliament. The House of Commons was not constitutionally competent, of its own mere motion, to create a disability to a seat in Parliament where none already existed; or to exclude from their midst anyone who had been duly returned as the representative of a city or borough, without the concurrence of the co-ordinate branches of the legislature.[t] We need not, therefore,

Attempts to exclude placemen from the House.

[pp] Hats. Prec. vol. ii. p. 67, *n.*

[q] Commons' Journals, vol. ix. pp. 321, 327.

[r] *Ibid.* p. 609.

[s] Parl. Hist. vol. iv. p. 1270.

[t] In 1833, the House of Assembly of Lower Canada attempted to void the seat of a member who had accepted office under the crown, by a resolution declaring his seat vacant, and ordering the issue of a new writ. This was pending the agreement of the Legislative Council to a Bill, then under consideration, declaring certain office-holders ineligible for a seat in the Assembly. But the Governor (Lord Aylmer) refused to affix his signature to a new writ of election (see his message, in Assembly Journals, March 8, 1833, p. 491). Subsequently, the Secretary of State for the Colonies expressed the entire

be surprised that no attempt was made by the House to enforce their resolution; and that the evil against which it was aimed continued unabated, until it was gradually removed by legislative enactments, to which our attention will be presently directed.

Proposed introduction of ministers into Parliament.

Sir William Temple's abortive scheme for the reconstruction of the Privy Council preceded by a few months only the passing of the foregoing resolution; having been launched into existence, as we have already noticed,[u] in the year 1679. But, although it authorised the introduction into the governing body of fifteen members of Parliament, having seats in either House, it did not contemplate or intend that these gentlemen should be office-holders under the crown. Whilst forming part of the great consultative and administrative Council, they were unofficial members thereof, and could not adequately represent in the House of Commons any department of the executive government. Moreover, they were not required to be agreed amongst themselves upon political questions, which were necessarily subjected to the control of the majority, or to the preponderating influence of the crown.[v]

In the unsettled relations between the crown and Parliament, which characterised the fifty years preceding the revolution of 1688, a vague notion arose in the minds of some of the leading politicians in the House of Commons that the persons of chief weight in that House should also be ministers of the crown, and should be instrumental in carrying on the public business in that capacity. But this idea did not take root, or assume any practical shape.

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approbation of the Imperial Government with His Excellency's determination, in a despatch, which was communicated to the House by the Governor. This despatch admitted the right of the Assembly to expel any person whom they might adjudge unworthy to be a member of their body, but repudiated and condemned, as unconstitutional, the attempt to create a disqualification, unknown to the law, by a mere declaratory resolution (*ibid.* Journals, January 13, 1834). And see Imp. Act, 3 & 4 Vict. c. 35, sec. 24.

[u] See *ante*, p. 69.

[v] This notable project 'was intended to unite all parties, giving to the king's interests a preponderance, through the official members of the Council.' Temple's Memoirs, vol. ii. p. 40.

The House of Commons preferred to be a perfectly independent body, with the privilege of criticising or opposing the king's policy without let or hindrance. The king, on the other hand, was resolute in maintaining his personal authority, and refused to permit his ministers to be held accountable for executing his own commands.[w] Whilst, therefore, we have frequent examples of the king's ministers sitting in the House of Commons, for at least two centuries before the Revolution, they were not there for the purpose of maintaining a connection between the crown and Parliament. On the contrary, their presence was barely tolerated. If the king was unpopular, or their own deeds equivocal, their very continuance in the House was apt to be regarded with suspicion. And the spirit of mistrust against them at length became so general, as to lead to a unanimous resolve for the total exclusion of all office-holders from the popular chamber.

Their presence objected to.

Meanwhile, upon the restoration of the monarchy, Charles II. and his advisers clearly perceived the necessity for some better understanding between the executive government and the Houses of Parliament than had heretofore prevailed. So the king appointed his principal minister, Lord Chancellor Hyde, 'and some others' (most likely including the members of the 'Committee on Foreign Affairs,' which had begun to act as a Cabinet Council), 'to have frequent consultations with such members of the Parliament who were most able and willing to serve him, and to concert all the ways and means by which the transactions in the Houses might be carried with the more expedition, and attended with the best success.'[x] This clumsy device probably suggested to Sir William Temple the introduction of the 'unofficial members' from the ranks of members of either House, which formed part of his short-lived scheme for the reorganisation

[w] See *ante*, vol. i. p. 37; Lord John Russell, in Hans. Deb. vol. clvi. p. 2058.

[x] Lister, Life of Clarendon, vol. ii. p. 7.

of the Privy Council, a few years afterwards. But nothing came of this ingenious attempt at carrying on the king's government in harmony with the rising power of Parliament.

William III.

It was not until the formation by William III. of his first parliamentary ministry, that we find any instance in our constitutional history of the cordial reception by the House of the ministers of the crown, in order that they might represent and be answerable for the great interests of the nation in that assembly. For hitherto, although the king's ministers might happen to have seats in Parliament, there had been no ministry that claimed to be associated together on principles of mutual agreement. In the words of Macaulay, 'under the Plantagenets, the Tudors, and the Stuarts, there had been ministers; but there had been no ministry. The servants of the crown were not, as now, bound in frank-pledge for each other. They were not expected to be of the same opinion, even on questions of the gravest importance. Often they were politically and personally hostile to each other, and made no secret of their hostility.'[y] But a brighter day was dawning. The sagacity of William enabled him to discern the importance of unanimity of opinion amongst the chief advisers of the crown; and also the necessity for a harmonious agreement between his councillors and the Houses of Parliament, in regard to the general policy of his government.

Nevertheless, at the outset, the king appears to have had no very clear ideas as to the lawful extent of ministerial responsibility, or as to the position which his ministers should occupy towards the two Houses.[z] The natural course of events gradually brought about the settlement of these difficult questions, and contributed to shape the project of the king to greater and more desirable consequences than he could himself foresee. Wisdom and

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[y] Macaulay, Hist. of Eng. vol. iii. p. 13. [z] *Ibid.* vol. iv. p. 437.

unanimity in council, vigour in action, and a cordial understanding between the sovereign and Parliament, might reasonably be expected to follow from the harmonious incorporation of the ministers of the crown with the legislative body. And these beneficial results have not been wanting, whenever ministers have been sufficiently strong to frame a decided policy, and sufficiently popular to commend their policy to the favourable consideration of Parliament.

But we are not to suppose that such an important change in the political system of England was effected at once. As will be presently shown, it was several years after his accession to the throne before William III. began to form a regular ministry.[a] His first Cabinets were not constructed upon any principle of unity. The members composing the same were not even obliged to be agreed upon questions of the utmost gravity, which in itself inevitably led to confusion and internal dissension. The administration was in fact a government by separate and independent departments, acknowledging no bond of union except the authority of the sovereign, their common head and lord. In every successive administration, Whigs and Tories were mingled together, in varying preponderancy. By this method, the king hoped to secure his own ascendancy, and to conciliate the rival factions in the state.[b] It is obvious that a ministry so constituted was not in a position to command the respect of Parliament, or to exercise an adequate control over its deliberations. But as the power of Parliament, and especially of the House of Commons, was steadily on the increase, and as its attitude towards the government was becoming daily more antagonistic, the king determined upon the experiment of substituting for the individual direction of public affairs the administration of a party, and of confiding the chief offices of government to leading Whigs,

His first Cabinets.

[a] See *post*, p. 97.

[b] Macaulay, Hist. of England, vol. iii. pp. 13, 65, 537; vol. iv. pp. 184, 299, 372.

who at that time were the strongest party in the House of Commons.[c] But in the endeavour to carry out this happy idea, which may justly be regarded as the main-spring of parliamentary government, a difficulty presented itself which for a while jeopardised, and threatened to frustrate altogether the king's design.

Placemen in the House of Commons.

The evils attendant upon the presence of placemen in the House of Commons had become so serious that, as we have already seen, it had been unanimously resolved, some ten years before the time when the king began to entertain the thought of a parliamentary ministry, that no member of the House, without express leave of the House itself, should accept of any office, or place of profit under the crown, under penalty of expulsion.[d] This resolution, however, had proved entirely abortive, and since its adoption the House had continued to swarm with placemen of all kinds, from high officers of state to mere sinecurists and dependents upon the court.[e] A more constitutional attempt to remedy this great abuse than was afforded by the adoption of a mere resolution of the House of Commons, was made in 1692, by the introduction of a Bill 'touching free and impartial proceedings in Parliament,'—the object of which was to disqualify all office-holders under the crown from a seat in the Lower House. This Bill passed through all its stages in the House of Commons rapidly, and without a single division, but was rejected by the House of Lords.[f] In 1693, another Bill was passed by the Commons, substantially the same as its predecessor. This measure was agreed to by the Lords with the important proviso that all office-holders whose seats should be vacated under this Act might 'be afterwards chosen again to serve in the same Parliament.' The Commons concurred in this

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[c] Macaulay, Hist. of Eng. vol. iv. p. 437; Knight, Pop. Hist. of Eng. vol. v. p. 167.

[d] See *ante*, p. 83.

[e] Macaulay, Hist. of Eng. vol. iv. pp. 121, 337; Parl. Hist. vol. iv. p. 1377, *n.*; vol. v. p. 468.

[f] Parl. Hist. vol. v. p. 745, *n.*

amendment; but the king, who regarded the whole measure as an encroachment upon his prerogative, refused to give it the royal assent.[g] And most reasonably, for while this Act would have authorised the presence of the king's ministers in the House of Commons, it would also have readmitted numbers of placemen who had no business there.

Inadequate remedy for this abuse.

In this very year, however, a partial remedy was applied to this monstrous evil, by the adoption of a resolution, in connection with the Bill of Supply granting certain duties of excise, 'that no member of the House of Commons shall be concerned, directly or indirectly, in the farming, collecting, or managing of the duties to be collected by this Bill, or any other aid to be granted to their majesties, other than the present Commissioners of the Treasury, and the Officers and Commissioners for managing the Customs and Excise.'[h] This resolution was added to the Bill, and became law.[i] It is memorable as being the first statutable prohibition of any office-holder from sitting and voting as a member of the House of Commons. The principle hereby introduced was afterwards applied and extended by similar Acts passed in this reign;[j] the provisions whereof were rigidly enforced by the expulsion from the House of several members who had transgressed the provisions of the same.[k]

But these Acts were too limited in their operation to meet the emergency of the case. Accordingly, we find Place Bills, to the same general purport as the Bill of 1692, above mentioned, again submitted to the House of Commons, in 1694, 1698, 1699, 1704, 1705, 1709, 1710,

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[g] Macaulay, Hist. of Eng. vol. iv. pp. 337–342, 479. The Commons ventured to approach his majesty with an earnest representation, protesting against this exercise of the royal prerogative, but they took nothing by their motion. *Ibid.* pp. 481–483; Commons' Journals, vol. xi. pp. 71, 74, 75.

[h] Com. Journ. vol xi. p. 99. And see *ibid.* vol. xiii. p. 427; vol. xiv. p. 480.

[i] 5 & 6 Will. & Mary, c. 7, sec. 57.

[j] 11 & 12 Will. III. c. 2, sec. 150; 12 & 13 Will. III. c. 10, sec. 89.

[k] See General Index, Commons' Journals, vol. i. (i.–xvii.) p. 423.

1711 and 1713. These measures, however, were of too sweeping a character to commend them to the favourable judgment of Parliament, and they were invariably rejected, for the most part by the House of Commons itself.[1]

Prospective exclusion of all placemen.

At length the majority of the House of Commons met with apparent success in carrying out their long cherished design of freeing their chamber from the presence of all dependants upon the crown. In the year 1700, when the Act Amendatory of the Bill of Rights, and to provide for the succession of the crown in the person of the Princess Sophia of Hanover, and her heirs, being Protestants—was under consideration; the Commons insisted upon the insertion of a clause in the Bill, which they imagined would afford additional security for the liberty of the subject, 'that *no person* who has an office or place of profit under the king, or receives a pension from the crown, shall be capable of serving as a member of the House of Commons.'[m] But this clause was only to take effect upon the accession of the house of Hanover, an event which did not take place until the year 1714. Meanwhile, the king had formed a ministry which was composed of persons who had seats in one or other of the Houses of Parliament; and the nation had begun to appreciate the advantages attending the introduction of Cabinet ministers into the legislature for the purpose of explaining and defending the measures and policy of the executive government. So that before the time came when this ill-considered provision should go into operation, Parliament was prepared to substitute for it a wiser and more temperate measure.

A due sense of the advantages attending the authorised admission of the chief ministers of the crown to seats in the legislative chambers, made it no less imperative upon the House of Commons to discriminate between the in-

[1] General Index, Com. Journ. vol. i. pp. 675, 801.

[m] Act of Settlement, 12 & 13 Will. III. c. 2, sec. 3.

troduction of those executive officers, whose presence in Parliament was essential to the harmonious and effective working of the state machine, and of other office-holders, who could only serve to swell the ranks of ministerial supporters, and stifle the expression of public opinion, of which members should be the true exponents. A few years' experience sufficed to point out the proper medium, and by a revision of the objectionable article in the Act of Settlement—an opportunity for which was happily afforded in the reign of Queen Anne, before the period fixed for its being enforced—Parliament preserved the principle of limitation, and at the same time relaxed the preposterous stringency of its former enactment.[n] The new Act passed in 1707 established, for the first time, two principles of immense importance, which have ever since remained in force, as effectual safeguards against an excessive influence on the part of the crown by the means of place-holders in the House of Commons. These are, firstly, that every member of the House accepting an office of profit from the Crown, other than a higher commission in the army, shall thereby vacate his seat, but shall be capable of re-election—unless (secondly), the office in question be one that has been created since October 25, 1705,[o] or has been otherwise declared to disqualify for a seat in Parliament.

Wise provisions by the Statute of Anne.

[n] The restrictive clause was repealed in 1705 by 4 Anne, c. 8, sect. 25; the new provisions, which were the result of a compromise between the two Houses, were enacted in 1707, by 6 Anne, c. 7, secs. 25, 26. See Parl. Hist. vol. vi. p. 474. Brief remarks upon the Reform Bill, as it affects one of the royal prerogatives. (London 1831), pp. 14–16.

[o] 6 Anne, c. 7, secs. 25, 26. The 25th clause of this Act further provided, in conformity to the principle laid down in the Act of Settlement, that 'no person having any pension from the crown during pleasure,' should be capable of being elected, or of sitting and voting in the House of Commons. By 1 Geo. I. stat. 2, c. 56, this was extended to persons in the receipt of pensions for any term or number of years. By an Act passed in 1859 (22 & 23 Vict. c. 5) it was provided that this ineligibility should not be construed to extend to the holders of pensions granted for diplomatic service, under the Act 2 & 3 Will. IV. c. 116. The disability, moreover, does not extend to pensions enjoyed for services in the army or navy, or to the case of pensions awarded to persons for services as members of the government, under the authority of the Acts 57 Geo. III,

The statute of Anne, however, though it checked the increase of the evil, left much to be accomplished before the House of Commons could be wholly freed from the presence of all placemen, whose services were not actually required for the purposes of parliamentary government. Some few classes of office-holders had been expressly disqualified by special enactment in this and in the previous reign; nevertheless, the number of ancient offices which were still compatible with a seat in the House of Commons continued to be excessive and unwarrantable.

Subsequent laws against placemen.

In the first Parliament of George I. there were 271 members holding offices or pensions; being nearly one half of the members of the then House of Commons. In the first Parliament of George II. there were 257.[p] The reformers of that day were therefore obliged to renew their efforts to rid the House of useless officials, by whose continuance in Parliament the crown was enabled to exercise an undue influence. Place Bills were again introduced, year after year. But the court influence was too powerful to admit of their success, and it was not until 1743 (the very year of the overthrow of Walpole's administration, which had become notorious for its systematic corruption), that an Act was passed whereby a great number of inferior officers were excluded from the House of Commons.[q] Further reforms in this direction were effected by various statutes passed in the reign of George III., so that in the first Parliament of George IV. there were but 89 office-holders, exclusive of gentlemen

c. 65, and 4 & 5 Will. IV. c. 24. (See Hans. Deb. vol. clv. p. 130.) It is probable that the restriction upon persons holding a pension from the crown for valuable public services, will ere long be still further modified, if not altogether removed. The Disqualifying Act was passed at a period when corruption was prevalent, and the reasons which called for its enactment no longer exist. On the other hand, ex-public officers, such as former colonial governors, judicial functionaries, or other persons who had served the crown in a civil capacity, would form a valuable addition to the House of Commons. See *ibid.* vol. clxxx. p. 670.

[p] Commons' Papers, 1833, vol. xii. p. 1.

[q] May, Const. Hist. vol. i. pp. 309–313; Genl. Index, Com. Journ. (1714–1774) verbo *Members*, xxiv.; Hearn, Govt. of Eng. p. 244; Act 15 Geo. II. c. 22.

holding commissions in the army or navy. Since then, the number of placemen sitting in the House of Commons has been further reduced by the abolition and consolidation of offices. In 1833, there were only 60 members holding civil offices or pensions, exclusive of 83 having naval or military commissions.[r] In 1847, the total number of offices of profit which might have been held at one time, by members of the House of Commons, was stated to have been only 46, and in 1867, but 43; exclusive of certain offices in the royal household occasionally conferred upon members of Parliament, and which may be held in connection with a seat in the Commons, after re-election upon acceptance thereof.[s]

Ministers admitted by law into House of Commons.

But inasmuch as the principal offices in the administration are not 'new offices' in the contemplation of the statute of Anne, and for the most part were in existence long before that enactment, the holders of them are exempted from its disqualifying operation. But whenever the exigencies of state have required the creation of additional crown offices—as, for example, the new Secretaries of State for India, and for War, in our own day—it has been necessary to obtain the sanction of Parliament to the introduction of these new officers within the walls of the House of Commons. And this sanction has been afforded, in every instance, by a statute rendering the office-holder in question eligible to be elected, and to sit and vote in the House of Commons, but not dispensing with the necessity for the re-election of a member upon his first appointment to any such office.[t] By requiring every member who should accept a non-disqualifying office to return to his constituents for a renewal of their suffrages, in his altered position as a minister of the crown, security is afforded against the undue influence of

[r] Commons' Papers, 1833, vol. xii. p. 1. And see Mr. Brougham's speech, Parl. Deb. N. S. vol. vii. p. 1311.

[s] Return, in Commons' Papers, 1867, No. 138. And see Rogers, Law of Elections, edit. 1859, pp. 191–203.

[t] Stats. 18 and 19 Vic. c. 10; 21 and 22 Vic. c. 106, sec. 4.

the crown in appointments to office. Owing to the acknowledged diminution of such influence in our own day, the necessity for this provision has become less obvious. It undoubtedly creates much delay and confusion in ministerial arrangements, without appearing to confer any equivalent advantage. But, as will be hereafter shown, Parliament has hitherto refused to countenance the frequent attempts that have been made to procure the removal of this restriction; although they have been advocated by statesmen of the highest authority.[tt]

Early use of nomination boroughs.

It is worthy of notice that, from the moment that the presence of the ministers of the crown in the House of Commons was legalised, the leading statesmen of England began to avail themselves of the so-called 'nomination boroughs,' as a means of entry into Parliament. Thus, Lord Mahon states 'that in the times of Queen Anne, as in ours, all the eminent statesmen of the age, with scarcely one exception, owed to the smaller boroughs, now disfranchised, either their introduction into public life, or their refuge during some part of it.'[u] It is no sufficient explanation of this circumstance to say that it was to save themselves the trouble and expense of contesting a larger constituency that prominent statesmen so freely availed themselves of the small boroughs. As has been already remarked, the smaller boroughs served a more important purpose than this. They were the resort of public men when suffering from the effect of transient popular illwill, whether arising from local or general causes; and they have been mainly instrumental in affording stability to successive administrations, when assailed by political animosity; and have also contributed to relieve those who have undertaken official duty from the cares which must largely engross the attention of the representatives of populous constituencies.[v]

[tt] See *post*, p. 267.

[u] Hist. of England, vol. i. p. 64. For particulars concerning the constituent bodies at this period, see Macaulay, Hist. of Eng. vol. iv. p. 332.

[v] See *ante*, vol. i. p. 11.

It was a peculiar advantage attending the system of nomination boroughs—a system which must now be reckoned amongst the things that are past—that its benefits were not confined to any creed or party. While, anterior to the first Reform Bill, the Treasury could count on some 30 or 40 seats as available for the benefit of the existing administration, others were at the disposal of peers or wealthy proprietors, either as simple property, or as the result of dominant local influence. In either case, it was for the manifest interest of the proprietors of these boroughs to make choice of candidates likely to reflect credit on their patrons, by an able and successful parliamentary career. Moreover, a certain number of these boroughs were generally to be purchased or leased for a round sum of money, say for 5,000*l.* or upwards, and in this way men who had amassed a fortune abroad, or by trade, and who were desirous of a seat in the House of Commons, but averse to a public canvass, or wholly destitute of personal or political influence, could find an entrance into Parliament, where they often rendered themselves conspicuous by their talents or usefulness, and were afterwards eagerly sought for by more prominent and influential constituencies.*

Advantages of having ministers in Parliament.

Hallam points out, with his usual sagacity, the evil consequences which most certainly would have attended upon the exclusion of the advisers of the crown from the House of Commons, and the immense advantages which have resulted from their immediate connection with that assembly. Nothing could have been devised more calculated to unite statesmen, of every shade of opinion, in the defence of the liberties of Parliament, or to secure for the Commons a preponderating share in the control of the executive administration, than the fact that it is in Parliament, and more especially in the House of Commons, that all great questions of public policy must, in reality,

* See Sir H. L. Bulwer's Historical Characters, vol. ii. pp. 207–210. And Hare on the Election of Representatives, chap. v.

be decided. The only road to ministerial success is the approbation of Parliament. A minister may frame the most judicious schemes of administrative or economical reform, but he must be able to satisfy Parliament that his views are sound and practicable before he is permitted to carry them into execution. The publicity which necessarily attends all proceedings of government, in consequence of the presence of ministers in Parliament to explain or defend the conduct of public affairs, at home or abroad, while it is liable to abuse, is nevertheless of immense advantage to the country. This obtains for the action of government the approbation of Parliament, and the sanction of public opinion, and it is this which gives peculiar significance to the foreign policy of the British crown, and to the declarations of English statesmen upon foreign affairs. 'The pulse of Europe beats according to the tone of our Parliament; the counsels of our kings are there revealed, and by that kind of previous sanction which it has been customary to obtain, become as it were the resolutions of a senate; and we enjoy the individual pride and dignity which belong to republicans, with the steadiness and tranquillity which the supremacy of a single person has been supposed peculiarly to bestow.'[x] The presence of Cabinet ministers in Parliament has moreover contributed largely to enhance the importance which is properly attached to the possession of a seat in the legislature. Members of Parliament excluded from office would become mere members of 'a debating society, adhering to an executive;' and this is not a position calculated to gratify a noble ambition, or to stimulate zeal for the public welfare. 'A first-rate man, indeed, would not care to take such a place, and would not do much if he did take it.'[y]

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[x] Hallam, Const. Hist. iii. 259. And see Macaulay, Hist. Eng. iv. 339–341. Hatsell's Precedents, ii. 66.

[y] Bagehot on the Cabinet, Fortnightly Review, No. i. p. 19. Story, in his commentaries on the Constitution of the United States (§ 869) points out very forcibly the evils which have resulted from the clause in the Constitution which excludes all

These are some of the benefits which have flowed from the formal introduction of the principal servants of the crown into the two Houses of Parliament. The public officers to whom this privilege is accorded, comprise not merely the Cabinet ministers, but also certain other functionaries who, although not of the Cabinet, preside over important departments of state, or who are political secretaries of certain executive offices which require to be specially represented in Parliament. But other subordinate officers of government are very properly excluded from the arena of political strife. The result of their exclusion is virtually to render their tenure of office that of good behaviour. And in the permanent officers of the crown the state possesses 'a valuable body of servants who remain unchanged while Cabinet after Cabinet is formed and dissolved; who instruct every successive minister in his duties, and with whom it is the most sacred point of honour to give true information, sincere advice, and strenuous assistance to their superior for the time being. To the experience, the ability, and the fidelity of this class of men is to be attributed the ease and safety with which the direction of affairs has been many times, within our own memory, transferred from Tories to Whigs, and from Whigs to Tories.'[1]

Exclusion of permanent officials.

In narrating the circumstances under which the ministers of the crown first obtained a legal right to sit in Parliament, we have somewhat anticipated the order of events, and must now revert to the history of the Cabinet during the reign of William III.

It was in the year 1693, that the king began to effect the important change in the status of the Cabinet Council which inaugurates a new era in the history of the English monarchy. By the advice of Sunderland, the king was induced to abandon his neutral position between the

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office-holders, including the president's ministers, from a seat in either House of Congress. And see Tremenheere, Const. of U. States, 163.

[1] Macaulay, iv. 339. And see *post*, p. 172.

contending parties in the state, and to entrust his administration to the Whigs, who were at that time the strongest party in Parliament. Protracted negotiations were required before this arrangement could be fully carried out, and it was not until the following year that the new ministry, formed upon the basis of party, was complete.[a] Even then, although the Cabinet was mainly composed of Whigs, it was not exclusively so. The king was cautious, and still tried to share his favours between the two contending parties. Two more years elapsed before the last Tory was removed from the Council-board, and a purely Whig ministry existed.[b]

His first Whig ministry.

Having at length succeeded in obtaining exclusive possession of the king's counsels, the Whigs devoted themselves to the work of instituting and maintaining discipline in their ranks, by the frequent assembling together of their friends and supporters in the House of Commons. Some of these meetings were numerous, others more select; but they formed the origin of a system of party organisation never before resorted to, but which has since been adopted and matured by every influential section in both Houses of Parliament.[c]

The first parliamentary ministry of King William was of brief duration. At the outset it was eminently successful in conciliating the goodwill of the House of Commons, but a general election made great changes, and it was soon apparent that the new House were not willing to co-operate with the existing administration.[d] Montague, who filled the important offices of First Lord of the Treasury and Chancellor of the Exchequer,—although not the Premier, in the modern sense of the term, no such supremacy in the Cabinet being yet acknowledged—became personally unpopular, and was violently assailed by his opponents in Parliament. According to our present theory of government, he should have resigned his

[a] Macaulay, iv. 438–467, 506.
[b] *Ibid.* 732.
[c] *Ibid.* 734.
[d] See *Ibid.* vol. v. p. 123.

office, and given place to the chiefs of the opposition. Out of office, the men who had become so obnoxious to the House, might have succeeded, by good statesmanship, in recovering its favour, and ere long have been summoned to resume their places. 'But these lessons, the fruits of the experience of five generations, had never been taught to the politicians of the 17th century. Notions imbibed before the Revolution still kept possession of the public mind. Not even Somers, the foremost man of his age in civil wisdom, thought it strange that one party should be in possession of the executive administration while the other predominated in the legislature. Thus, at the beginning of 1699, there ceased to be a ministry; and years elapsed before the servants of the crown and the representatives of the people were again joined in a union as harmonious as that which had existed from the general election of 1695, to the general election of 1698. The anarchy lasted, with some short intervals of composedness, till the general election of 1705. No portion of our parliamentary history 'is less pleasing or more instructive.' Deprived of the constitutional control afforded by the presence of ministers of the crown, in whom they were willing to confide, the painful scenes of the earlier years of this reign were re-enacted, and again 'the House of Commons became altogether ungovernable; abused its gigantic power with unjust and insolent caprice, browbeat king and Lords, the Courts of Common Law and the constituent bodies, violated rights guaranteed by the Great Charter, and at length made itself so odious that the people were glad to take shelter, under the protection of the throne and of the hereditary aristocracy, from the tyranny of the assembly which had been chosen by themselves.'[e]

His subsequent administrations.

Such is the history, as drawn by the able pen of Macaulay, of the difficulties attending the first establishment of parliamentary government in England. With all his

[e] Macaulay, v. 168.

penetration, the king failed to perceive that the true remedy for these evils lay in the formation of an entirely new ministry possessed of the confidence of that parliamentary majority which he had found to be so unmanageable. He contented himself with making some minor changes; and with a view to conciliate the Opposition, selected his new appointments from the Tory ranks. 'But the device proved unsuccessful; and it soon appeared that the old practice of filling the chief offices of state with men taken from various parties, and hostile to one another, or at least unconnected with one another, was altogether unsuited to the new state of affairs; and that, since the Commons had become possessed of supreme power, the only way to prevent them from abusing that power with boundless folly and violence, was to entrust the government to a ministry which enjoyed their confidence.'[f]

Queen Anne.

In 1702 William III. closed his eventful career, and was succeeded by Anne, during the greater part of whose reign conflicts, of more or less intensity, prevailed between the Whigs and the Jacobites, both in and out of Parliament.

As yet no better system of government existed than that afforded by a ministry who, although they had seats in Parliament, were neither necessarily united amongst themselves, nor in harmony with the predominant political party in the legislature. Thus far the lessons of wisdom, taught by the experience of the preceding reign, had not been duly appreciated by succeeding statesmen. As a natural consequence, the queen's ministers were unable, at first, to control the legislature. But after awhile the splendid successes of Marlborough in the Netherlands, in the campaigns of 1705 and 1706, gave strength to the government, and restored their supremacy. Thenceforward, the usual changes occurred in successive administrations, each party preponderating in turn, and then having to give place to their rivals. But no events took place during this reign of material importance in the

[f] Macaulay, v. 184–187.

history of parliamentary government, with the exception of the formal repeal of the ill-advised provisions in the Act of Settlement in regard to the Privy Council, and the disqualification of office-holders to be elected to Parliament, which, had they ever gone into operation, would have hindered the development of Cabinet governments, and have excluded the queen's ministers, in common with all other placemen, from a seat in the House of Commons.[g] Shortly afterwards, as we have seen,[h] a new Place Bill was enacted, which expressly sanctioned their presence in Parliament, thereby affixing the seal of legislative approval to the new constitutional system, and establishing it upon a firm and unimpeachable basis.

Complete acknowledgment of ministerial responsibility.

It is in this reign, in the year 1711, that we first meet with a positive declaration, in a debate in the House of Lords, that the sovereign ought not to be held personally responsible for acts of government, but that 'according to the fundamental constitution of this kingdom, the ministers are accountable for all.'[i] Furthermore, that there is no prerogative of the crown that may be exempted from parliamentary criticism and advice.[j]

But in the exercise of their acknowledged freedom of debate upon the conduct of the administration, there was some difficulty at first as to the phraseology to be employed in Parliament to designate the queen's advisers. Thus, on the occasion above mentioned, a discussion arose as to the propriety of using the term 'Cabinet Council' in an address to the queen. Through inadvertence this expression had been embodied in a formal motion; but it was afterwards objected to, as being 'a word unknown in our law.' In the course of the debate, Lord Peterborough told the House that he had heard the Privy Council defined as a body 'who were thought to know

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[g] 4 Anne, c. 8, secs. 24, 25.

[h] See *ante*, p. 91.

[i] Parl. Hist. vol. vi. p. 972. Hearn, Eng. Govt. p. 135. See *ante*, vol. i. p. 41, where the first public assertion of this principle was erroneously assigned to a later date.

[j] Parl. Hist. vol. vi. p. 1088.

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everything and knew nothing,' and the Cabinet as those 'who thought nobody knew anything but themselves.'[k]

More than half a century afterwards, in the elaborate treatises of Blackstone and De Lolme upon the British constitution, the existence of the Cabinet was entirely ignored, and no writer has hitherto attempted to trace the rise and progress of this institution, and to explain, in detail, its formation and functions.[l]

II. The later history and present organisation of the Cabinet.

Principles of parliamentary government.

In entering upon this branch of our subject, it will be profitable to inquire more particularly into the origin and working of three cardinal principles of parliamentary government, to which—taken in connection with the authoritative introduction of ministers into the legislature—we owe its present organisation and efficiency. These are (1) the rule (already partially considered) which requires political unanimity in the Cabinet; (2) the practice of simultaneous changes of the whole Cabinet, as a result of its dependence upon parliamentary majorities; (3) the office of Prime Minister, as a means of perfecting the machinery of administration, and of insuring the carrying out of a policy that shall be acceptable alike to the sovereign and to Parliament.

1. The rule requiring political unanimity in the Cabinet.

By this is meant, not merely union of the ministers in their administrative capacity, but a unanimity, real or professed, in advocating or opposing legislative measures in Parliament.[m] William III., as we have seen, was convinced of the advantages resulting from a bond of political

[k] Parl. Hist. vi. 974. And see Knight, Hist. of Eng. vol. v. p. 168.

[l] See Macaulay, Hist. of Eng. vol. iv. pp. 435, 437. It is also very remarkable that in none of the writings of the statesmen who framed the Constitution of the United States, is there any indication that they were acquainted with the position then occupied by the English Cabinet. Hearn, Govt. of Eng. p. 196.

[m] Cox, Inst. 252.

agreement between the members of his Cabinet, and formed his ministry in 1695 on this basis. A partial attempt was made by the House of Commons, in 1698, to hold all the leading ministers responsible for advising the obnoxious Partition Treaties.[n] But the value of the principle was not sufficiently appreciated either by the statesmen of that period, or by the king himself. In the various changes which ensued in the composition of the ministry during the remainder of this reign, it was lost sight of, and men of opposite parties were included in the same Cabinet. So long as the king was regarded as paramount in the government, and his views as those which should always prevail in council, the discordance of opinion therein was comparatively unimportant. But in proportion as the dogma of the royal impersonality began to prevail, and the power of the Cabinet to increase, the necessity for political agreement amongst the ministers of the crown became more obvious and indisputable.

The principle of unanimity in the Cabinet.

The ministries appointed by Queen Anne, however, exhibited the same want of agreement apparent in the later ministries of William III. Upon her accession, in 1702, her majesty, whose personal inclinations were in favour of Tory principles, lost no time in forming a new ministry, consisting for the most part of Tories, that continued in office until 1705, when it underwent extensive changes, which gave the predominance to the Whigs.[o] In 1707, the Cabinet was again partially remodelled, and rendered still more Whiggish, Mr. Secretary Harley being the only Tory of note who was permitted to remain. But in the course of the year, Harley himself was removed, for endeavouring 'to set up for himself, and to act no longer under the direction of the Lord Treasurer.' Soon afterwards the Earl of Pembroke retired, when the ministry consisted, once more, entirely of Whigs.[p] At length,

[n] See *ante*, vol. i. p. 42. Parl. Deb. vol. vi. p. 327.

[o] Pict. Hist of Eng. iv. 142, 180.

[p] *Ibid.* 200, 215, 222. Burnet, Hist. of his Own Time.

through the influence of Dr. Sacheverell, Tory principles began to get the ascendancy throughout England, whereupon the queen took occasion, in 1710, to dismiss her ministry, and entrust the formation of another to Harley, the acknowledged leader of the Tory party. Harley, at first, attempted a coalition with the Whigs, but not succeeding, he obtained the queen's consent to a dissolution of Parliament, there being evident tokens that the existing Whig House of Commons would probably be replaced by one of opposite politics. This anticipation proved correct, and Harley had therefore no difficulty in forming a Cabinet composed exclusively of Tories.[q]

Discord in Queen Anne's Cabinets.

But even then political union was not obtained. Harley was a dissenter, strongly inclined to toleration, and suspected of Hanoverian proclivities. His principal colleague, Bolingbroke, on the contrary, favoured the Jacobites, and was no friend either to Whiggery or dissent. This occasioned frequent disagreements, and even personal altercations in the council chamber, and in the royal presence. Moreover, the other members of the Cabinet were divided in their political sentiments, some being attached to the Protestant succession, and others partial to the Pretender.[r]

This want of concord between ministers upon questions of vital import was more and more apparent as the end of the queen's life drew nigh. Each party calculated eagerly upon the chances of that event, hoping to secure for themselves the supremacy. When the queen lay upon her death-bed Bolingbroke's influence was uppermost, and he managed to get the queen's authority to form a new administration. His plans were suddenly frustrated by an event which is quite unique in our parliamentary history, and which is worthy of notice, not merely as illustrating the evil effects of divided counsels, but also as exemplifying a state of things that could only have arisen in the infancy of parliamentary institutions.

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[q] Pict. Hist. of Eng. iv. 246, 248. [r] Mahon, Hist. of Eng. i. 44, 45.

Bolingbroke was steadily engaged in the work of constructing his ministry, and had already filled up most of the principal offices with men of the Jacobite party. He had ulterior designs in view of favouring the claims of the Pretender to succeed to the throne upon the demise of the queen. Knowing her precarious state, he caused a Cabinet Council to be summoned for June 30, 1714. When that day arrived the Council assembled at Kensington, the high officers of state, already appointed thereon, alone being present. Lord Mahon gives the following graphic account of the meeting :—'The news of the queen's desperate condition had just been received. The Jacobites sat dispirited, but not hopeless, nor without resources. Suddenly the doors were thrown open, and Argyle and Somerset (who were members of the Privy Council, though not of the Cabinet) were announced. They said that, understanding the danger of the queen, they had hastened, though not specially summoned, to offer their assistance. In the pause of surprise which ensued, Shrewsbury rose and thanked them for their offer.' (This nobleman, it appears, was in reality a Whig, but he had succeeded in deceiving Bolingbroke, who fully relied upon his fidelity, and had bestowed upon him the offices of lord chamberlain and lord lieutenant of Ireland, while he was actually concerting in secret measures with the two Whig peers, the Dukes of Argyle and Somerset, whose unexpected appearance at the Council filled the Cabinet conspirators with dismay.) 'They, immediately taking their seats, proposed an examination of the physicians; and on their report suggested that the post of Lord Treasurer (which Bolingbroke had intended to put into commission) should be filled without delay, and that the Duke of Shrewsbury should be recommended to her majesty.' 'The Jacobite ministers, thus taken completely by surprise, did not venture to offer any opposition to this recommendation, and accordingly a deputation, comprising Shrewsbury himself, waited upon her

majesty the same morning, to lay before her what seemed the unanimous opinion of the Council. The queen, who by this time had been roused to some degree of consciousness, faintly acquiesced, delivered the treasurer's staff to Shrewsbury, and bade him use it for the good of her people. The duke would have returned his staff as chamberlain, but she desired him to keep them both; and thus by a remarkable, and I believe unparalleled combination, he was invested for some days with three of the highest offices of court and state, being at once Lord Treasurer, Lord Chamberlain, and Lord-Lieutenant of Ireland.' 'Another proposal of the Dukes of Somerset and Argyle, which had passed at the morning meeting, was to send immediately a special summons to all Privy Councillors in or near London. Many of the Whigs accordingly attended the same afternoon, and amongst them the illustrious Somers. . . . His great name was in itself a tower of strength to his party; and the Council, with this new infusion of healthy blood in its veins, forthwith took vigorous measures to secure the legal order of succession.'[s] Thus ends the narrative of this startling and successful *coup d'état*.

Circumstances favoured the daring statesmen by whom it was accomplished. The next day the queen sank back into a lethargy, and died on the following morning. Nothing but a consideration of the eminence of the peril encompassing the state, and of the necessity for prompt and decided action, could have warranted such a high-handed proceeding; for then, as now, the meetings of Council were open to those Councillors only who had been specially summoned in the name of the sovereign to attend. With a monarch in possession of his proper faculties, such an event could not happen; for, as we have seen,[t] a Privy Councillor may be struck off the list at the royal discretion, so that even if one were to venture upon attend-

[s] Mahon's Hist. of Eng. i. 133, 144.

[t] See *ante*, p. 53.

ing a Council meeting without a summons, he would subject himself to the risk of instant dismissal, upon the appeal of the Prime Minister to the sovereign.

Continued divisions in the Cabinet.

Divisions in the Cabinet, from the want of a recognition of the principle of political unity, continued to exist during the administrations which followed upon the accession of the House of Hanover, save only when Robert Walpole was chief minister. Owing to his extraordinary talents, thorough familiarity with the details of office, and skill in the art of governing men, Walpole succeeded in engrossing the supreme direction of affairs. For twenty years his control in the Cabinet was unlimited and undeniable. But when, in 1742, he was compelled to retire from office, there ceased to be any political agreement amongst the ministers of the crown. Pulteney, who upon Walpole's resignation was commissioned to form a new ministry, was obliged to content himself with a reconstruction of the old one on the Whig basis; and when reproached by his party that the Tories, though forming the larger portion of the opposition under his command, had been altogether excluded from office, he counselled patience, and justified his conduct on the plea that 'there was neither justice nor prudence in attempting to dictate to the king.' Ere long the Tory party were gratified by receiving a share of the ministerial offices, and so the new administration was founded upon 'the broad bottom' of both parties.[a] In 1763, upon the retirement of Lord Bute, the elder Pitt was sent for by the king, but he refused to form a ministry unless there was almost a complete change of men in the ministerial offices, declaring 'that if his majesty thought fit to make use of such a little knife as himself, he must not blunt the edge; and that he and his friends could never come into government but as a party.' The king refused to give up those who had served him faithfully, and thus the

[a] Mahon, Hist. of Eng. vol. iii. pp. 161–169, 198.

negotiation came to an end, Lord Grenville being entrusted with the formation of a ministry, the composition of which was amicably arranged between himself and the king.[v]

Lack of a bond of union.

The lack of a common bond of union amongst the ministers of the crown at this period, and the continued interference of the king with the proposed arrangements for the construction of ministries, naturally resulted in a series of weak and vacillating administrations. Moreover, it was no uncommon thing, at this time, to see colleagues in office opposing one another in Parliament upon measures that ought to have been supported by a united Cabinet.[w] This defective system continued in operation during the first twenty years of the reign of George III., and until the rise of the second William Pitt.[x] For the long continuance of practices so entirely opposed to the principles of constitutional government, the king himself must be regarded as mainly accountable. In his love of power, and anxiety to carry out his peculiar ideas of government, he had formed a party of his own which was known as 'the king's friends,' with whose aid he endeavoured to influence the course of legislation, irrespective of his responsible advisers, if the measures they proposed were at all at variance with his private convictions. Many of 'the king's friends,' who held offices in the state or household, looked to the king and not to his ministers for instructions; and accordingly, not unfrequently opposed the ministerial measures in their progress through Parliament.[y] But after Mr. Pitt became Premier, in 1783, this objectionable practice was discontinued. The king placed entire confidence in Mr. Pitt, and yielded to his advice in state affairs, save only in

[v] Grenville Papers, vol. ii. pp. 104–106, 198.

[w] See *post*, pp. 325–331. Hearn, Govt. of Eng. pp. 198, 199. Cox, Inst. 253. Knight's Hist. of Eng. vol. vi. pp. 140, 200.

[x] *Ibid.* 303, 434, 439. Mahon, Hist. of Eng. vol. vii. p. 213. Adolphus, George III. vol. iii. p. 349. Donne, Corresp. George III. vol. i. p. 282. Hearn, Govt. of Eng. p. 195.

[y] See *ante*, vol. i. p. 49.

regard to certain questions, which he would not permit to be entertained. Pitt's supremacy in the councils of his sovereign, as well as in Parliament, was undisputed by his colleagues, and continued unimpaired until his death. After that event, and during the existence of the Grenville ministry, the king for a short time, in 1807, renewed his interference with the policy of his constitutional advisers, threatening them with the opposition of his 'friends' in Parliament, if they continued to support Roman Catholic claims. But on the dismissal of this ministry a Tory Cabinet was again formed, under Mr. Perceval, to which the king gave an unqualified support.

Political unanimity an established principle.

In 1812, during the Regency, an attempt was made to form a ministry, consisting of men of opposite political principles, who were invited to accept office, not avowedly as a coalition government, but with an offer to the Whig leaders that their friends should be allowed a majority of one in the Cabinet. This offer, though declared at the time to be not 'a very unusual thing,' was declined on the plea that to construct a cabinet on 'a system of counter-action was inconsistent with the prosecution of any uniform and beneficial course of policy.'[z]

From henceforth this was an admitted political maxim, and all Cabinets are now constructed upon some basis of political union, agreed upon by the members composing the same when they accept office together. It is also distinctly understood that, so long as the different members of a Cabinet continue in the ministry, they are jointly and severally responsible for each other's acts, and that any attempt to separate between a particular minister and the rest of his colleagues in such matters would be unconstitutional and unfair.[a] The existing usage in this respect will receive a fuller explanation when we come

[z] Stapleton's Canning and his Times, p. 201. Parl. Deb. vol. xxiii. pp. 428, 450.

[a] Lord Palmerston, Hans. Deb. vol. clxxiii. p. 1920; *Ibid.* vol. clxxvi. p. 1272. And see Grey, Parl. Govt. new ed. pp. 51–58. Hearn, Govt. of Eng. p. 201. Quarterly Review, vol. 123, p. 544.

to consider the duties of the administration in connection with Parliament.

(2) The practice of simultaneous changes of the whole cabinet, as a result of its dependence upon the approbation of the House of Commons.

Simultaneous changes formerly unknown.

This practice, like that to which our attention has just been directed, was unknown upon the first establishment of parliamentary government. During the reign of William III. changes in the ministry were always gradual, and were occasioned partly by the personal feelings of the king, and partly by considerations of the relative strength of parties in Parliament. From the Revolution until the reign of George I., there is no instance of the simultaneous dismissal of a whole ministry, and their replacement by another.[b] The first example of this kind occurs in the time of George I., who immediately upon his accession to the throne effected a total change in all the principal offices of state. But this alteration took place on account of personal objections entertained by the king to the ministers of Queen Anne, not because of prevailing opinions in Parliament.

Sir R. Walpole.

The first instance on record of the resignation of a Prime Minister in deference to an adverse vote of the House of Commons, was that of Sir Robert Walpole.[c] The career of this statesman is remarkable, as he affords in his own person the first example of elevation to the rank of first minister of the crown, and of subsequent deprivation of office, without reference to the personal wishes of the sovereign, but through the influence of the dominant party in the House of Commons.

In the year 1721, George I. being the reigning monarch, and Lord Sunderland his first minister, the Whig leaders, who had a large majority in the House of Commons, exerted their influence for the promotion of Walpole, who held a subordinate office in the ministry,

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[b] Cox, Inst. 247, 251.

[c] *Ibid.* 249.

to be First Lord of the Treasury, in place of Sunderland, who was obliged to resign, owing to the popular odium against him, on account of his supposed implication in the notorious South Sea Bubble. Sunderland was the king's favourite minister, and he himself was no party to the proposed arrangement, even if it was not directly contrary to his wishes. Nevertheless, although through the efforts of Walpole he had been acquitted from the charge of being directly concerned in this stupendous fraud, yet public opinion compelled him to resign his post of First Lord of the Treasury. Walpole's ascendancy in the House of Commons pointed him out as the most capable man to succeed to this office, and thus he became Prime Minister.[d] His career in this capacity was, as we have seen,[e] extremely successful. He soon contrived to ingratiate himself with George I. and to enjoy the confidence of that monarch, and of his successor, for nearly twenty years. During the same period he managed to retain his ascendancy in the House of Commons. At length the tide of popularity turned against him, and in 1741 it became evident that his downfall was at hand.

Becomes Prime Minister.

On February 13, 1741, addresses for the removal of Sir Robert Walpole from the king's presence and counsels for ever, were proposed in both Houses of Parliament. The mover of the address in the House of Commons attributed to Walpole entire responsibility for the misgovernment of the country, because he had 'grasped in his own hands every branch of government; had attained the sole direction of affairs, monopolised all the favours of the crown; compassed the disposal of all places, pensions, titles and rewards,'—truly a scarcely exaggerated description of the almost despotic power of a constitutional Premier. The line of defence adopted by Walpole was singular; and quite inconsistent with the modern

[d] Coxe, Memoirs of Walpole, vol. i. chs. 21, 22.

[e] *Ante*, p. 107. See further particulars in regard to Walpole's character and methods of administration, *post*, pp. 120–125

doctrine of the right of Parliament to control the fate of the king's ministers. He vindicated his conduct in office, accepting the full measure of his responsibility which had been imputed to him, but declared that 'an address to his majesty to remove one of his servants, without so much as alleging any particular crime against him, was one of the greatest encroachments that was ever made upon the prerogative of the crown;' and he called 'upon all who respected the constitution, and the rights of the crown, to resist the motion.' His speech produced a strong effect, and the motion was negatived by a large majority. A similar result attended the motion in the House of Lords.[f] Soon after this, Parliament was dissolved, it having reached the natural term of its existence. When the new Parliament met, it was speedily apparent that Walpole's popularity was gone. After a defeat on the Chippenham election petition, on January 28, 1742, he took the advice of his friends, and, with great reluctance, resigned his office.[g] Thus the end of his political career, as well as its beginning, must be wholly ascribed to the great and increasing influence of the House of Commons.

Walpole resigns, but not his colleagues.

Walpole's resignation, however, was not accompanied by that of the whole of his colleagues; the solidarity of the ministry, and its dependence upon the continuance in office of its recognised head, not having been as yet established. On the contrary, the king (George II.) sent a message to Pulteney, who had been commissioned to form a new ministry, expressing a hope that he would 'not distress the government by making too many changes in the midst of a session.' To this Pulteney replied, that he did not insist on a total change, provided the principal officers in the Cabinet, and 'the main forts of the government,' were delivered into the hands of his party. These terms were accordingly agreed upon.[h]

[f] Mahon, Hist. of England, iii. 101–112.

[g] *Ibid.* 164.

[h] *Ibid.* 165.

The advent of Lord Rockingham's ministry to power, in 1782, is noticeable as being the first instance of the simultaneous change of the whole administration, in deference altogether to the opinions of the House of Commons. The ministry of Lord North, after an existence of twelve years, began to be regarded with disfavour in that House. A direct vote of want of confidence had indeed been negatived, but only by a majority of nine. A similar motion was about to be offered, when it was evident that the defeat of the ministry could not be averted. The king himself was strongly averse to change, but Lord North managed to convince him that it was unavoidable. Accordingly, on March 20, 1782, the very day when the new motion, to declare that the House had lost confidence in his majesty's advisers, was to be brought forward, Lord North was commissioned to inform the House that his administration was at an end.[i] Seven days afterwards the king wrote to Lord North, 'At length the fatal day is come, which the misfortunes of the times, and the sudden change of sentiments in the House of Commons, have driven me to, of changing my ministers, and a more general removal of other persons, than I believe was ever known before.' Excepting that Lord Thurlow still remained as 'the king's chancellor,'[j] the change of administration was total, a thing heretofore unprecedented.[k]

Lord North's ministry

retires altogether.

[i] Mahon, Hist. of Eng. vii. 205–208.

[j] Thurlow was first appointed Lord Chancellor in June, 1778, in Lord North's administration. He continued to hold the office during the subsequent administrations of Lord Rockingham and Lord Shelburne. During the Coalition Ministry, from April to December, 1783, the Great Seal was in commission. But on Mr. Pitt's appointment to office, in December, 1783, Lord Thurlow resumed the Great Seal, and retained it until his dismissal, in January, 1793. (*Ed. Rev.* vol. ciii. p. 333.) Another striking example of the retention of office by an individual minister during successive changes of government, is found in the case of the late Lord Palmerston, who was first appointed Secretary at War in 1809, and continued to fill that office, without intermission, until 1828. He was afterwards appointed Foreign Secretary, in November 1830, which office he held until 1841, with the exception of the brief interval of the Peel ministry, in 1834–5. In his subsequent career, he invariably followed the fortunes of his party.

[k] Knight's Hist. of Eng. vol. vi. p. 435. Cox, Inst. Eng. Govt. 251.

Since then ministries have gone out together.

Thenceforward, the existence of a ministry has always depended upon its ability to retain the goodwill or confidence of Parliament, and when a change of ministry has occurred, it has invariably been simultaneous and complete. If any individual ministers have remained in office, upon the formal retirement of a Cabinet, they have been obliged to make a fresh agreement with the incoming Premier, ere they could form part of the new administration. The precise circumstances under which resignations of office become constitutionally necessary, will be hereafter considered.

(3). The origin and development of the office of Prime Minister.

Internal condition of the Cabinet before the reign of Geo. III.

Our remarks on this head will be suitably prefaced by a brief description of the interior condition of the Cabinet Council at the precise stage in its history at which we have now arrived.

At the period of the accession of the House of Hanover, parliamentary government may be considered as fully established.[1] It had been accepted, both by the crown and by the people, as the polity best adapted for insuring harmonious action between the executive and legislative authorities; and as affording the freest scope for freedom of opinion combined with an intelligent regard for the maintenance of monarchical principles. Nevertheless, the new system was still in its infancy, and it exhibited all the marks of immaturity. The Cabinet itself was frequently the scene of internal dissensions, which naturally tended to weaken its influence very materially; and until this grave defect could be overcome, it was impossible that its legitimate authority could be properly exercised or appreciated. Incidental notices, scattered through contemporaneous writings, sufficiently betoken how far the Cabinet Council was at this time from being recognised as a distinct institution, with definite rules of practice and acknowledged responsibilities.

[1] Hallam, Const. Hist. iii. 390.

From the first introduction of an interior, or 'Cabinet' Council, in the reign of Charles II., until the time of Queen Anne, all deliberations therein upon affairs of state were conducted in the presence of the sovereign.[m] No doubt, during the frequent absences from the kingdom of William III., the ministers of the crown were permitted to meet and confer together on political questions, in an informal way. But the right of the king to be present at all such consultations was never disputed. It was Queen Anne's regular practice to preside at weekly Cabinet Councils, at which all public business, foreign and domestic, was debated and determined upon.[n] It was only upon the accession of George I., who was incapable of speaking our language, that it became customary for ministers to hold Cabinet meetings by themselves, and to communicate the result of their discussions to the king by means of a leading member of the Cabinet, or some particular minister, whose department might be affected by the matter in hand.[o] By the end of George II.'s reign, it had become 'unusual' for the sovereign to be present at consultations of the Cabinet. But we find an instance of the practice soon after the accession of George III.[p] Since that period, however, the absence of the sovereign from Cabinet Councils may be considered as having been permanently engrafted into our constitution.[q]

Deliberated in presence of the sovereign.

Meanwhile, ministers had gradually acquired the habit of meeting together, at stated intervals, usually at the house of the principal minister, to hold private conferences upon state affairs. Thus, in Queen Anne's reign Dean Swift mentions that Mr. Harley, then the head of the administration, used to invite four or five of the leading ministers to dine with him every Saturday, and 'after dinner, they used to discourse and settle matters

Private conferences between ministers.

[m] See *ante*, pp. 66, 67.
[n] Campbell, Chancellors, vol. iv. p. 287.
[o] Hallam, vol. iii. p. 388.
[p] Waldegrave's Memoirs, p. 66. Harris, Life of Hardwicke, vol. iii. p. 231.
[q] Campbell, Chancellors, vol. iii. p. 191, *n.* Hearn, Govt. of Eng. p. 190.

of great importance.' These meetings were not, however, always strictly confined to members of the administration, for the dean himself was frequently invited to join them.[q] In the reign of George II. it would appear from Lord Hervey that the Cabinet meetings were held irregularly, and at no fixed times. Walpole, when first minister (1721–1742), met the whole Cabinet as seldom as possible, but often invited two or three of his colleagues to dinner, to talk over matters of business, and assist him in shaping his intended policy, the which for the most part he kept in his own hands.[r] And afterwards, during the Grenville administration (1763–65), weekly 'Cabinet dinners' were again resorted to, as affording a convenient opportunity for mutual concert amongst ministers. These convivial assemblies were ordinarily attended only by the Lord Chancellor, the President of the Council, the First Lord of the Treasury, and the two Secretaries of State. But when important matters were to be discussed, requiring the advice of other ministers, having special acquaintance with the particular subject, or ability to give counsel thereupon, such were invited to be present.[s]

Ministers with seats in the Cabinet.

As regards the individuals who, at this time, were usually included in the Cabinet, and their relative weight and importance therein, we have no very precise information, although incidental notices in contemporary writers furnish some curious particulars. Thus, William III. is said to have appointed the Marquis of Normanby, as a mark of favour and distinction, to a seat in the 'Cabinet Council,' and yet to have 'never consulted' him; and Sir John Trenchard, who was Secretary of State from 1692 to 1695, 'though he bore the title and drew the salary,' 'was not trusted with any of the graver secrets of state,' and was 'little more than a superintendent of police.'[t] Marlborough was a member of the first Cabinet of

[q] Campbell, Chancellors, vol. iv. p. 450, *n.*

[r] *Ibid.* pp. 607, 608. Lord Hervey's Memoirs, by Croker, vol. ii. p. 551.

[s] Massey, Reign of Geo. III. vol. i. pp. 277, 328.

[t] Macaulay, vol. iv. pp. 373, 506. Haydn, Book of Dignities, p. 172.

George I., holding at the same time the office of Commander-in-Chief, and yet he was 'scarcely ever invited to the Cabinet, of which he nominally formed a part, and was confined to the most ordinary routine of his official functions,' being unable to 'obtain even a lieutenancy for a friend.'[u] In the reign of George II. we learn that the great officers of the household,—*e.g.*, the Lord Steward, the Lord Chamberlain, the Master of the Horse, and the Groom of the Stole, together with the Archbishop of Canterbury, and the Lord Lieutenant of Ireland,—were always included in what was called the Cabinet,—but that there was an 'interior Council,' consisting of Walpole, who was virtually Prime Minister, the Chancellor, and the two Secretaries of State, who in the first instance consulted together on the more confidential points.[v] It does not appear that the Chancellor of the Exchequer, an officer who is now of the first importance in every administration, was usually a member of the Cabinet at this time. When Mr. Dowdeswell accepted this office, in 1765, we find a doubt expressed in contemporary correspondence, whether he would have a seat in the Cabinet Council.[w]

Interior Council.

During the Grenville administration, in 1764, we learn that it was considered 'the part of the Secretary of State to open the subject on which the [Cabinet] Council met; to deliver his own opinion, and then ask that of other lords.'[x] And at this time a Secretary of State

[u] Mahon, Hist. of Eng. i. 153.

[v] Lord Hervey's Memoirs of George II. edited by Croker, ii. 551, *n.* The testimony of Lord Hervey on this point may be relied upon, as he himself held the office of Privy Seal, with a seat in the Cabinet. He favours us with some amusing minutes of discussion in the Cabinet in 1740, which besides graver matters, chronicle the jokes and witticisms of the noble Councillors. (*Ibid.* pp. 553–571.) The facts stated in the text are further corroborated by the papers of Lord Chancellor Hardwicke, who occupied a very conspicuous position as a minister in this reign. These papers prove, moreover, that the then Archbishop of Canterbury took a very active part in politics, as a member of the Cabinet. Harris, Life of Hardwicke, i. 383; ii. 111, 415; iii. 453.

[w] Memoir of Dowdeswell, in Cavendish Debates, i. 576.

[x] Grenville Papers, vol. ii. p. 515.

was the official medium for communicating minutes of the Cabinet to the king.'[y]

Gradations in the Cabinet.

So lately as in 1782, under the Shelburne administration, there appear to have been different gradations of power within the Cabinet. They were thus quaintly described by the Earl of Shelburne himself, in conversation with the famous Jeremy Bentham. First, the Cabinet simply, including those who were admitted to that honourable Board, but without possessing substantial authority. Next, the Cabinet with *the circulation*, that is, with the privilege of a key to the Cabinet boxes, wherein the foreign despatches and other papers are sent round for the perusal of ministers; and highest of all, the Cabinet with the circulation and the *Post Office*, in other words, the power of ordering the letters of individuals to be opened at the Post Office, a right which technically belongs only to a Secretary of State, and would naturally be limited to the personages of the greatest weight and influence in the administration.[z]

From all these particulars it is evident that the Cabinet was, during this period, in a transition state, and was very far from exhibiting the homogeneity it now presents. In fact, for the first century after the Revolution, very little of the order and subordination which has been since established throughout the administration, from the highest to the lowest offices, was in existence. Government was principally carried on by means of the separate departments of state, each independent of the other, and subject only to the general superintendence of the crown.[a] No provision was made for regular concert between the ministers; nor was it even necessary that the head of a department should inform his colleagues, either individually or collectively, of the measures he

Government by departments.

[y] Grenville Papers, vol. iii. p. 16, *n.* 'Previous to 1721, the main authority had often been vested in a Secretary of State.' Mahon, Hist. of Eng. vol. iii. p. 237.

[z] Bentham's Works; vol. ix. p. 218, *n.* And see *ante*, vol. i. p. 272.

[a] Macaulay, Hist. of Eng. vol. iii. p. 14.

proposed to take. The consequence was that differences of opinion between members of the administration, which should have been accommodated in the closet, were often disclosed for the first time in the presence of Parliament. Periodical Cabinet Councils, for the purpose of deliberating upon affairs of state, were unknown.

Lack of a supreme head.

The defective condition of the Cabinet, during this period, is chiefly attributable to the fact that, as a general rule, it did not recognise the supremacy of any common chief. No doubt it has always happened that men of strong character, and gifted with the capacity for rule, have taken the lead amongst their fellows. Thus, as we shall have occasion presently to notice, Sir Robert Walpole, who was chief minister under the first two Georges, was able during the greater part of his long administration, to keep his colleagues completely in check. His extraordinary ability, and unrivalled parliamentary influence, naturally gave him a controlling power in the Cabinet. But his was an exceptional case. It was not until the accession to office of the younger Pitt, in 1783, that the paramount authority of a Prime Minister over his associates in the government was unreservedly confessed.

Early notices of a Prime Minister.

Great as have been the changes, since the Revolution, in the authority of the Cabinet Council as a body, the altered position of the first minister has been peculiarly remarkable. From a very early period of English history we find mention made of a functionary of this description. But there is an obvious distinction between the Prime Minister of a monarch under prerogative government, and the Premier of a modern Cabinet. The one was simply known as the king's favourite, whose rise and fall depended solely upon his retaining the goodwill of his royal master, while the other is the acknowledged head of a responsible administration, whose tenure of office mainly depends upon his ability to obtain parliamentary support. Bearing in mind this distinction, we have a clue to the variation

which has taken place in public opinion with regard to this office.

We are told by Clarendon that nothing was so hateful to Englishmen, in his day, as a Prime Minister. They would rather, he said, be subject to a usurper, like Oliver Cromwell, who was first magistrate in fact as well as in name, than to a legitimate king who referred them to a Grand Vizier.[b] During the reign of William III. there was usually a 'chief adviser of the crown,' on matters relating to the internal administration, and to the management of the two Houses of Parliament; but this functionary was not necessarily the first minister *virtute officii*. The king himself was the actual head of his own ministries, and the sole bond of union amongst the members composing the same.[c] So recently as 1741, we find Sir Robert Walpole resenting the title of prime minister as an imputation.[d] And yet it was in his person, though not until he had been for a considerable time First Lord of the Treasury, that this office first began to assume importance.[e]

Sir R. Walpole as First Minister.

Walpole was First Lord of the Treasury from 1715 to 1717, and afterwards from 1721 to 1742. It was under his administration that the government of this country began to be conducted with direct reference to the prevailing opinions in Parliament. He was the first Prime Minister who sat in the House of Commons, and by his extraordinary sagacity as a parliamentary leader, he contrived to conciliate the favour of that powerful assembly for his measures, without derogating from its great and increasing influence in public affairs. He was also the first to introduce a proper subordination amongst the servants of the crown in Parliament in support of the policy of the government, and, in several minor points, the features of our modern political system began to show themselves during his career.[f]

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[b] See Macaulay, Hist. of England, vol. iii. p. 13.

[c] See *Ibid*, pp. 13, 538, vol. iv. p. 443. *Ante*, vol. i. p. 44; vol. ii. p. 87.

[d] Parl. Hist. vol. xi. p. 1287, *n*.

[e] Macaulay's Biographies, p. 231.

[f] See Hearn, Govt. of Eng. p. 206.

Walpole's love of power was such as to occasion the remark that he would tolerate 'none but mutes in his Cabinet.'[g] But he wielded his power with such tact, temper, and administrative capacity, that when his supremacy was fairly established, he did more to produce a good understanding between the crown and Parliament, and to render the executive government efficient, than any man in England, since William III.[h] Secure in the possession of the king's favour, his prudence, steadiness, and vigilance, joined to a remarkable moderation in his character and politics, preserved the crown to the house of Hanover, and with it their laws and liberties to his countrymen.[i]

As a party leader.

Lord Campbell describes Walpole as having been probably the most dexterous party leader we have ever had—equally skilled to win royal favour, to govern the House of Commons, and to influence or be influenced by public opinion. He likewise well understood the *material* interests of the country, and, so far as was consistent with his own retention of power, he was desirous of promoting them.[j] He was just the man for the times, which called for a statesman of peculiar discretion and common sense to conduct the nation safely over the critical period of the establishment of a new dynasty, and the consolidation of a new political system. In proof of this we may be excused for quoting Carlyle's quaint remarks upon Walpole, though they are neither flattering nor altogether just. Incidentally referring to him, in his Life of Frederick of Prussia, he says: 'For above ten years, for almost twenty years, virtually and through others, he has what they call "governed" England; that is to say, has adjusted the conflicting parliamentary chaos into counterpoise, by what methods he had; and allowed England, with Walpole

[g] Mahon, Hist. of Eng. vol. iii. p. 235. And see *Ibid.* vol. i. p. 391.

[h] See Governor Pownall's essay, quoted in Coxe's Walpole, vol. iii. p. 617. And a clever sketch of the character and career of Walpole, in Blackwood's Magazine for April, 1868.

[i] Burke's appeal from the new to the old Whigs, p. 63.

[j] Campbell's Chancellors, vol. v. p. 95, *n.*

atop, to jumble whither it would and could. Of crooked things made straight by Walpole, of heroic performances or intention, legislative or administrative, by Walpole, nobody ever heard; never of the least hand-breadth gained from the Night-Realm in England, on Walpole's part: enough if he could manage to keep the Parish Constable walking, and himself afloat atop.' . . . 'This task Walpole did—in a sturdy, deep-bellied, long-headed, John Bull fashion, not unworthy of recognition.' 'He had one rule, that stood in place of many: To keep out of every business which it was possible for human wisdom to stave aside. "What good will you get of going into that? Parliamentary criticism, argument, and botheration! Leave well alone. And even leave ill alone: are you the tradesman to tinker leaky vessels in England? You will not want for work. Mind your pudding, and say little!" At home and abroad, that was the safe secret.' 'In this manner, Walpole, by solid John Bull faculty (and methods of his own), had balanced the parliamentary swaggings and clashings, for a great while; and England had jumbled whither it could, always in a stupid, but also in a peaceable manner.'[k]

Walpole's methods of government.

Walpole's 'methods' of carrying on the king's government, we learn from the private journal of a colleague in office. It seems that Sir Robert as seldom as possible called meetings of the whole Cabinet; but his favourite mode of preparing business was to invite two or three more immediately connected with the department to which the subject belonged, or whose opinion he particularly valued, to dine with him; and after the most unrestrained conversation with them, he settled what was fit to be done. Thus, he would invite the two Tory law lords, Harcourt and Trevor, to meet the Chancellor, that he might consider with them respecting reforms of the Court of

[k] Carlyle's Frederick the Great, vol. iii. pp. 373, 374. This reminds us of Lord Melbourne who when any hazardous or difficult question was propounded by his colleagues, used to say 'Can't you let it alone?'

Chancery. It would appear that during the whole course of his administration, he rarely consulted with his colleagues in regard to the general policy of the government, but usually confined his conferences with them to the discussion of measures concerning their own particular departments.[l]

His alleged corruption.

Much has been said in regard to the corruption displayed by Sir Robert Walpole in his dealings with Parliament. But the charges against him on this score were greatly exaggerated;[m] and although bribery practices are undoubtedly a crying evil, they were not peculiar to his age. The Parliaments that preceded the Revolution were notoriously open to the influence of bribery, and more or less, in one form or another, it would seem that this vice is well-nigh inseparable from popular institutions.[n] A keener sense of personal honour, and a higher tone of public morality has, in our own day, freed our legislative halls from this degrading offence, but the reproach still rests upon the constituencies, and it is one that must be equally shared by the electors and the elected until corruption shall be happily purged out from every part of our political system.[o]

His downfall.

At last, after a protracted period of almost absolute sway, Walpole's supremacy in Parliament came to an end. On February 13, 1741, a motion was made in the House of Lords for an address to the king, praying him 'to dismiss Sir Robert Walpole from his presence and councils for ever.' In this debate it was vaguely asserted that Walpole had made himself for the past fifteen or sixteen years 'sole minister.' But this accusation was combated by the Lord Chancellor (Hardwicke), on the ground that it was an impeachment of the king's impartiality to

[l] Campbell, Chancellors, vol. iv. pp. 607, 608.

[m] Mahon, Hist. of Eng. vol. i. p. 402.

[n] For an account of the rise and progress of parliamentary corruption in England, see Macaulay, Hist. of Eng. vol. iii. p. 541, et seq. May, Const. Hist. vol. i. ch. vi.

[o] See Brougham, Brit. Const. pp. 61, 62, and Mr. Disraeli's observations on the causes and consequences of bribery. Hans. Deb. vol. clxxxvii. p. 1324.

suppose that he could permit any man, or minister, solely to engross his ear. And he added, 'it is very well known that this minister's recommendation does not always succeed, nor does his opinion always prevail in Council; for a candidate has often been preferred in opposition to the candidate recommended by him, and many things have been resolved on in Council contrary to his sentiments and advice.'[p] The motion was negatived by a large majority. A protest was afterwards entered on the journals, signed by thirty-one peers, who declared their conviction 'that a sole, or even a first minister, is an officer unknown to the law of Britain, inconsistent with the constitution of this country, and destructive of liberty in any government whatsoever;' and that 'it plainly appearing to us that Sir Robert Walpole has for many years acted as such, by taking upon himself the chief, if not the sole direction of affairs, in the different branches of the administration, we could not but esteem it to be our indispensable duty, to offer our most humble advice to his majesty for the removal of a minister so dangerous to the king and the kingdoms.' The protest proceeded to allege various instances wherein Sir Robert Walpole had 'grossly abused the exorbitant power which he illegally possessed himself of.'[q]

Simultaneously with the motion in the Lords for the removal of Sir Robert Walpole, a similar motion was made in the House of Commons, where after a long debate it was negatived by a vote of 290 to 106.[r] Nevertheless, the debates were instrumental in weakening the power of the great minister out of doors. A dissolution of Parliament ensued; the elections went against Walpole, and after defeats in the new House of Commons on certain election questions, which were then considered as legitimate opportunities for a trial of party strength, the veteran statesman resigned all his offices, and retired to the House

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[p] Parl. Hist. vol. xi. pp. 1083, 1126.

[q] *Ibid.* p. 1215.

[r] *Ibid.* p. 1303.

of Lords, with the title of Earl of Orford.[s] An attempt was afterwards made to procure Walpole's impeachment, but it signally failed.[t] Since then there has been no instance of an endeavour to proceed by impeachment against a minister of the crown for political offences not affecting his personal character.

Incapable premiers.

After Walpole's retirement, in 1742, several years elapsed before there was any first minister who exercised more than a nominal control over his colleagues. The government was in the hands of the Whigs, and the Whig party of that day 'displayed little ability for office, and much for division and intrigue.'[u] Wilmington, Pelham, and Newcastle were successively First Lords of the Treasury, but they were all statesmen of an inferior order, and the Cabinets over which they presided were weakened by intestine divisions, and struggles for the mastery.[v]

Ministerial dissensions

In 1744, however, under the Pelham administration, there occurred the first noticeable instance of a leading and important member of the Cabinet being obliged to resign, because of political differences between himself and a majority of his colleagues. Lord Granville (previously known as Lord Carteret), one of the Secretaries of State, and a favourite at court, jealous of the supremacy of Pelham, endeavoured to lead a party in the Cabinet against him. But after being repeatedly repulsed, he declared that he could no longer submit to be out-voted and overruled on every point. Then, addressing the Pelhams, he said, 'If you will take the government you may; if you cannot or will not, there must be some direction, and I will do it.' At length matters came to a crisis, when the king, who was inclined to side with Lord Granville, appealed to Lord Orford for advice and assistance. He advised the king to take part with the majority of his Cabinet. Whereupon his majesty intimated to the

[s] Mahon, Hist. of Eng. vol. iii. pp. 101–155.
[t] *Ibid.* pp. 180–187.
[u] Donne, Corresp. Geo. III. vol. i. p. xxxvii.
[v] Mahon, Hist. of Eng. vol. iii. pp. 201, 503; vol. iv. pp. 41, 54–57.

Chancellor his resolution that Lord Granville should resign.[w] These events speedily led to a reconstruction of the ministry, still under the presidency of Pelham, which was afterwards known as the 'Broad-bottom' administration, because it comprised a grand coalition of all parties.[x] This circumstance is in itself indicative of the absence of any fixed principles of public policy amongst the statesmen of this period; for coalitions are contrary to the very foundation principle of parliamentary government, which is a government by means of that party which is for the time being predominate.[y] Coalitions are only justifiable under peculiar and exceptional circumstances, as for the purpose of carrying out some measure or undertaking of national concern, upon which men of all parties are agreed.[z]

Coalitions.

Pitt's administration.

But in 1756, Pitt (afterwards Earl of Chatham) became Secretary of State. His commanding talents and decision of character made him at once the ruling spirit in the Cabinet. At first, the Duke of Devonshire, and in the course of the year, his grace of Newcastle, presided at the Treasury, but the latter in returning to office was obliged to accede to Pitt's proposals, and to yield substantially the direction of public affairs into the great commoner's

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[w] Bedford Correspondence, vol. i. pp. xxv–xxxv.

[x] This was the favourite phrase of the day. Writing to Sir H. Mann, Feb. 18, 1742, H. Walpole says: 'One now hears of nothing but the *broad bottom*; it is the reigning cant word, and means the taking all parties and people indifferently into the ministry.' Mahon, Hist. of Eng. vol. iii. p. 168, *n.*

[y] See *ante*, vol. i. p. 8.

[z] The only examples afforded in later times of Coalition Ministries, are those of Fox and North, in 1783, of 'All the Talents,' in 1806, of Canning, and afterwards of Goderich, in 1827, of Wellington, in 1828, and last of all of Lord Aberdeen's administration in 1852. For an account of these administrations, and of the events which led to their formation, see *ante*, vol. i. pp. 76–148. In 1834, Lord Stanley refused to coalesce with his political opponent, Sir R. Peel, on the ground that, 'the reputation of those who take part in public affairs is a matter of national importance: and confidence in public men has been more shaken by coalitions than by all the other acts of personal misconduct taken together.' (Peel's Memoirs, vol. ii. p. 40.) For arguments in defence of the Coalition Ministry in 1827, see Edinburgh Review, vol. xlvi. pp. 248, 426, and in relation to that of 1852, *Ibid.* vol. xcvii. p. 264.

hands, while he continued to exercise the patronage appertaining to his rank as first minister of the Crown.[a] The events which ushered in this administration—perhaps the greatest and most glorious that England had yet known—are very curious, and reveal an extraordinary amount of intrigue and duplicity on all sides. George II. was not partial to Pitt,[b] Newcastle was exceedingly jealous and afraid of him, Fox had been his formidable antagonist; and yet all of them were reluctantly compelled to agree to his assuming the reins of government, upon his own terms.[c] Ere long, Pitt succeeded in winning the favour of the king, by his vigour and patriotism, and in maintaining a remarkable ascendancy over the House of Commons.[d] The effect of his energy and vigilance as an administrator was soon apparent in every department under his direction; for 'he was possessed of the happy talent of transfusing his own zeal into the souls of all those who were to have a share in carrying his projects into execution.'[e]

Mr. Pitt's administration lasted for upwards of five years, and was most popular and successful at home and abroad. But after a time his colleagues, and especially the Duke of Newcastle, began to feel his yoke sit uneasily upon them, and to wince at the haughty and despotic conduct which he exhibited towards themselves as well as to his own subordinates in office.[f] In 1760, George III.

[a] Jesse, Life of George III. vol. i. p. 123.

[b] It was pithily remarked by Dr. Johnson, that Walpole was a minister given by the king to the people, but Pitt was a minister given by the people to the king (Mahon, Hist. of Eng. vol. v. p. 245). George II. was the monarch referred to in both instances. As we have already seen, Walpole was originally appointed first minister by George I. through parliamentary influence (*ante*, p. 111). Upon the accession of George II. he was continued in office, contrary to general expectation, and to his own great surprise, through the interposition of Queen Caroline, who perceived that he was more fitted for the post than any of his competitors. Coxe's Mem. of Walpole, vol. i. ch. 32.

[c] *Ibid.* vol. iv. pp. 146–162.

[d] *Ibid.* p. 279.

[e] Parl. Hist. vol. xix. p. 1227. And see Mahon, Hist of Eng. vol. v. p. 249.

[f] Donne, Corresp. Geo. III. vol. i. p. xlviii. Mahon, Hist. of Eng. vol. iv. pp. 350, 359; vol. v. pp. 258, 271. Jesse, Life of George III. vol. i. pp. 77, 81.

ascended the throne, and among the changes consequent upon his accession was the introduction of Lord Bute, the personal friend and adviser of the king, into the Cabinet. Bute was no admirer of Pitt, and determined to oust him from office. By his personal influence and intrigue, he was soon enabled to accomplish his purpose. Pitt came down to the Council with a project for an immediate declaration of war against Spain. But only one member of the Cabinet went with him; the rest protested against what seemed to them a rash and unwarrantable step. Pitt was left in a minority; whereupon, declaring that he had been called to the ministry by the voice of the people, to whom he considered himself as accountable for his conduct, and that he would not remain in a situation which made him responsible for measures he was no longer allowed to guide, he announced his intention of retiring from office. The President of the Council, the veteran Earl Granville, expressed his regret at Pitt's determination; but added, 'I cannot say I am sorry for it, since he would otherwise have certainly compelled us to leave him. But if he be resolved to assume the right of advising his majesty, and directing the operations of the war, to what purpose are we called to this Council? When he talks of being responsible to the people, he talks the language of the House of Commons, and forgets that at this board he is only responsible to the king. However, though he may possibly have convinced himself of his infallibility, still it remains that we should be equally convinced before we can resign our understandings to his direction, or join with him in the measures he proposes.' After delivering his reasons in writing for adhering to the proposed course, Mr. Pitt, on October 6, 1761, resigned his seals of office into the hands of the king.[s] George III. was sorry to part with him; but said that upon the point in question he agreed so much with the majority of his Council, that if in this instance they had

Pitt's resignation.

[s] Mahon, Hist. of Eng. vol. iv. p. 361. Donne, vol. i. pp. xlvi.-liii.

sided with Mr. Pitt, it would have been difficult for his Majesty to bring himself to yield to their opinion.[h]

Upon the retirement of his powerful rival, Newcastle hoped that he might become in fact what he had been for five years in name only—head of the Government. But he was doomed to be disappointed. His associates in office treated him with contempt, his subordinates with disrespect; his recommendations were disregarded by the king, and at last the crowning indignity was offered to him by the creation of seven new peers, without any previous consultation with him as First Minister of the Crown! Strange to say, he not only put up with this affront, but plaintively requested that his cousin, Thomas Pelham, might be added to the number. Bute, who had held the office of Secretary of State, in conjunction with Mr. Pitt, took advantage of Newcastle's unpopularity, and of his own ascendency at court, to assume the upper hand in the cabinet. His friends and adherents were the stronger party; and so, at length, on May 26, 1762, the timorous and despised old Duke of Newcastle thought it best to withdraw from office.[i] Newcastle ministry.

On the resignation of Newcastle, Lord Bute immediately got himself appointed First Lord of the Treasury. But his ministry was of very brief duration. He was unpopular in the country, and unable to control his own cabinet. Upon the plea that his health was suffering from the cares of State he retired to avoid an overthrow.[j] Notwithstanding his withdrawal from public life, Bute is charged by contemporary writers with having, at least for several years, continued to exercise an unconstitutional influence over the king. But this accusation, so long confidently maintained, is now declared to have been unwarrantable.[k] Bute ministry.

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[h] Bedford Correspondence, vol. iii. p. 48.

[i] Donne, vol. i. p. liv. Jesse, Geo. III. vol. i. pp. 120-122. Mahon, Hist. of Eng. vol. iv. pp. 365, 386.

[j] *Ibid.* p. 387. Donne, vol. i. p. lviii.

[k] Edinb. Rev. vol. cxxvi. pp. 14–17. Donne, p. lix. See *ante*, vol. i. p. 50.

Grenville ministry.

George Grenville succeeded Bute as First Lord of the Treasury in 1763. His administration was chiefly remarkable for its bad qualities. Lord Macaulay is 'inclined to think that it was on the whole the worst which has governed England since the Revolution:' in that it was signalised by 'outrages on the liberty of the people, and outrages on the dignity of the crown.' Grenville endeavoured to coerce the king into yielding to him in everything, and as both were self-reliant and obstinate men, the result was not productive of harmony. Neither were the ministers agreed amongst themselves, but were continually quarrelling, either about the distribution of patronage, or upon some matter of administrative business. Taking advantage of the growing weakness of this administration, the king dismissed it July 10, 1765, and by the aid of his uncle, the Duke of Cumberland, he succeeded in forming a new ministry with the Marquis of Rockingham as First Lord of the Treasury.[1]

Rockingham ministry.

During their tenure of office, the Rockingham administration treated George III. with becoming reverence and respect, and conducted the affairs of the nation, if not with vigour, at any rate with uprightness and propriety. But unhappily the king did not reciprocate their good feeling, and Pitt stood aloof from them, so that their existence was weak and precarious. In the summer of 1766, they sustained a severe loss in the retirement of the Duke of Grafton, who was one of the Secretaries of State, and the king determined upon getting rid of them. His Majesty then applied once more to Pitt, and gave him a *carte blanche* to construct a new administration.[m]

Pitt again premier.

In resuming the helm of the State, Pitt nominated the Duke of Grafton as First Lord of the Treasury, and took for himself the office of Privy Seal, with a seat in the House of Lords, as Earl of Chatham. Pitt's conduct as head of this ministry was characterised by the same

[1] Jesse, George III. vol. i. pp. 204, 278, 285–307. Edinb. Rev. vol. cxxvi. p. 18. Donne, pp. lxiv.-lxviii.

[m] *Ibid.* pp. lxix.–lxxvii.

haughty spirit which he had formerly displayed in a similar position. Then, his ascendancy had been considerably greater than most prime ministers possess; now, it was not only great but paramount.[n] The Duke of Grafton contentedly acquiesced in his supremacy, but others took such offence at his imperious conduct that they retired from the ministry in dudgeon. Meanwhile the physical powers of Pitt began to give way, and he was disabled for months from attendance in the cabinet. He proffered to resign, and only remained in office at the earnest entreaty of the king, who continued to regard him as the mainstay of his government. But in October, 1768, Lord Chatham's growing infirmities compelled him to abandon his post, an event which was hastened by some misunderstanding with his colleagues, which had arisen out of his enforced retirement from active business. Until the month of March, 1767, he had been virtually Prime Minister; from that time he scarcely knew what was going forward. Even at the last, both the king and his own colleagues entreated him to continue in office; but he was resolute, and though he survived for ten years longer, and resumed his attendance in the House of Lords, he never again took a share in the king's councils.[o]

Grafton ministry.

Upon the retirement of Chatham, the Duke of Grafton became for a time the actual head of the administration. Internal dissensions, however, soon brought his ministry to an end, and in February, 1770, Lord North, who had been Chancellor of the Exchequer since February, 1767, was appointed First Lord of the Treasury.[p]

Lord North's ministry.

The North administration was one of remarkable duration. Six prime ministers had preceded Lord North, within the first ten years of this reign, but his ministry lasted longer than all of them combined. It continued in existence for upwards of eleven years, being sustained by

[n] Mahon, Hist. of Eng. vol. v. p. 271. Jesse, Geo. III. vol. i. p. 389.
[o] Donne, vol. i. p. lxxx. Mahon, Hist. of Eng. vol. v. p. 308. Haydn, Book of Dignities, p. 94, *n.*
[p] Donne, vol. i. pp. lxxx.-lxxxiii.

the favour of the king and the suavity of its gentle and good-humoured chief. The most potent cause of North's success was undoubtedly his influence over the House of Commons. He was thoroughly conversant with the practice of Parliament, and an adept in the art of controlling a popular assembly. Ready-witted, dexterous, and agreeable as a speaker, he could always maintain his ground, even against the phalanx of wit and eloquence that was generally arrayed against him; and yet his public policy was weak and vacillating. His (recently published) correspondence with George III. affords abundant proof of the persistent interference of his Majesty with the details of government, both great and small, in every branch of the public service; and of Lord North's ready submission to the king's will.[q] The North administration came to an end in 1782. The events which occasioned its downfall have been already explained in a former part of this work, wherein will be found a notice of the successive administrations of England from that period to the present time.[r] A brief mention of the several ministries from 1721 to 1782 was needful in this place, for the purpose of elucidating the growth of the office of Prime Minister under parliamentary government.

Rockingham again premier.

In March, 1782, after the resignation of Lord North, the Marquis of Rockingham was appointed First Lord of the Treasury, and nominal chief minister. The king, who felt the loss of his favourite, Lord North, very keenly, was violently opposed to Lord Rockingham, whom he justly regarded as the nominee of the ultra-Whig party. He would have preferred Shelburne, who was also a Whig, but less extreme in his opinions; but that nobleman declined to undertake the formation of a ministry, and advised the king to send for Rockingham. The king was obliged to consent, and Lord Shelburne quitted the royal

[q] Donne, vol. ii. pp. 399, 450. Jesse, Life of George III. vol. i. p. 487.

[r] See *ante*, vol. i. p. 73. For an account of the scene in the House of Commons upon Lord North's resignation, see Jesse, George III. vol. ii. p. 347.

presence with full powers to treat with Lord Rockingham as to men and measures, and with the understanding that the latter nobleman should be at the head of the Treasury. But so averse was the king to this arrangement, that he expressed his determination not to admit Lord Rockingham to an audience until he had completed the construction of the cabinet. This mark of royal displeasure would have induced Lord Rockingham to decline the proffered honour, had he not been urged by his friends to forego his objections. Accordingly, on March 27, he waited upon the king to submit the names of the proposed ministry. It comprised Lord Shelburne and Mr. Fox, as Secretaries of State, and an equal number of the Shelburne and Rockingham parties. These discordant elements refused to amalgamate, and naturally produced dissensions in office and differences in Parliament. Such, however, were the abilities and popularity of Fox, that he was generally considered as the principal person in this ministry, and, had he been so disposed, he might easily have attained an acknowledged pre-eminence. In proof of the small estimation in which Lord Rockingham was held, it is stated, that while it is the admitted right of the Prime Minister to 'take the king's pleasure' upon the creation of peers, Mr. Dunning received a peerage on the advice of Lord Shelburne, and without the knowledge of the chief minister; who, as soon as he became aware of the circumstance, applied to his Majesty for a similar favour on behalf of another lawyer, Sir Fletcher Norton.[s]

Coalition ministry.

After the death of Lord Rockingham, in July, 1782, the king appointed Lord Shelburne First Lord of the Treasury; whereupon his colleague, Fox, immediately resigned. Fox accused Shelburne of gross and systematic duplicity towards his brother ministers, and particularly to himself when they were Secretaries of State together; and now, in the words of his friend, Edmund Burke, he

Shelburne ministry.

[s] Jesse, George III. vol. ii. pp. 352, 373. Adolphus, Hist. Geo. III. vol. iii. pp. 348, 349.

appeared to feel 'the utter impossibility of his acting for any length of time *as a clerk* in Lord Shelburne's administration.'[t] A letter written by Lord Grenville, in December, 1782, mentions 'Lord Shelburne's evident intention to make cyphers of his colleagues.'[u] But in the ensuing February this ministry came to an end. Then followed the brief and inglorious episode of the Coalition administration of Fox and North, which was nominally under the presidency of the Duke of Portland, but in which Fox, who held the seals as Secretary of State, was virtually supreme.[v] The preparation of an unpopular and most objectionable measure for the government of India occasioned the downfall of this ministry, under circumstances which have been already described in the previous volume.[w] It was in December, 1783, that the Coalition ministry received its dismissal from the king, and was succeeded by the powerful administration of Mr. Pitt, which lasted from 1783 to 1801.[x]

Government by departments still prevailing.

The method of government by departments—which was in vogue before the Revolution, continued to prevail under Walpole, and was still in operation during the period we have been passing under review—enabled the sovereign to exercise a more direct influence in all the details of government than would have been possible under a united administration subordinated to a political head. In fact it gave to the occupant of the throne that general superintendence over all departments of State which is now exercised by the Prime Minister. But this bureaucratic system excited much dissatisfaction in Parliament. In 1781 the existing governmental arrangements were strongly denounced in both Houses. The Duke of Richmond declared 'that the country was governed by clerks, each minister confining himself to his own office; and,

[t] Russell's Corresp. of Fox, vol. i. p. 457. Jesse, George III. vol. ii. p. 380.

[u] Buckingham Papers, vol. i. p. 84.

[v] Russell's Life of Fox, vol. ii. p. 4. Corresp. of Fox, vol. ii. p. 95.

[w] See *ante*, vol. i. pp. 52, 77. Russell's Life of Fox, ch. xviii.

[x] *Ante*, vol. i. pp. 77–80.

consequently, instead of responsibility, union of opinion, and concerted measures, nothing was displayed but dissension, weakness, and corruption.'[y] Upon the formation of the Coalition ministry, in 1783, at a private meeting which took place between the new allies on February 14, Mr. Fox insisted 'that the king should not be suffered to be his own minister;' to which Lord North replied, 'If you mean there should not be a government by departments, I agree with you; I think it a very bad system. There should be one man, or a cabinet, to govern the whole, and direct every measure. Government by departments was not brought in by me; I found it so, and had not vigour and resolution to put an end to it. The king ought to be treated with all sort of respect and attention, but the appearance of power is all that a king of this country can have. Though the government in my time was a government by departments, the whole was done by the ministers, except in a few instances.'[z] Lord North's doctrine in respect to the authority of the crown was greatly in advance of his time, and was not, as we have seen, in accordance with his own practice.[a] But whatever theoretical opinions might be entertained by his responsible advisers on this subject, the king himself, taking advantage of the system which Lord North condemned, lost no opportunity of exercising the authority which he believed to be the proper appurtenance of the regal office, so as to be, in fact, 'his own minister.'[b]

W. Pitt's ministry.

It was impossible that any administration could tolerate a continual interference, on the part of the sovereign, in the details of government. Accordingly, when William Pitt, at the earnest solicitation of the king, consented to take the chief direction of the State, the constitutional relations between the sovereign of England and his ministers underwent a change, and began gradually to assume

[y] Parl. Hist. vol. xxii. p. 651.
[z] Russell, Corresp. of Fox, vol. ii. p. 38.
[a] See *ante*, p. 132.
[b] See *ante*, vol. i. pp. 47–54.

their present aspect. Mr. Pitt's principles being thoroughly in accord with those of his royal master, the king was content to acquiesce in his judgment and conduct of affairs, so far as was consistent with a due regard to his own prerogative.[c] While, so far as his colleagues were concerned, the commanding talents and indomitable energy of Mr. Pitt enabled him to assert, without hesitation or complaint, a supremacy in the Cabinet Councils that has ever since been the acknowledged right of the First Minister of the Crown.

Development of the Premier's office.

The development of the office of Prime Minister in the hands of men who combined the highest qualities of statesmanship with great administrative and parliamentary experience—such as Sir Robert Walpole, the two Pitts, and Sir Robert Peel—has contributed materially to the growth and perfection of parliamentary government. Before the Revolution, the king himself was the mainspring of the State, and the one who shaped and directed the national policy. If he invoked the assistance of wiser men in this undertaking, it was that they might help him to mature his own plans, not that they might rule under the shadow of his name. With the overthrow of prerogative government all this was changed. When the king was obliged to frame his policy so as to conciliate the approbation of Parliament, it became necessary that his chief advisers should be statesmen in whom Parliament could confide. And no ministers will accept responsibility unless they are free to offer such advice as they think best, and to retire from office, if they are required to do anything which they cannot endorse. In every ministry, moreover, the opinions of the strongest man must ultimately prevail. Thus, by an easy gradation, the personal authority of the sovereign under prerogative government receded into the background, and was replaced by the supremacy of the Prime Minister under parliamentary government. In the transition period which

[c] See *ante*, vol. i. p. 56. Donne, Corresp. Geo. III. vol. ii. p. 451.

immediately succeeded the Revolution, William III., by virtue of his capacity for rule, as well as of his kingly office, was the actual head and chief controller of his own ministries. But the monarchs who succeeded him upon the throne of England were vastly his inferiors in the art of government. George I. was unable to converse in the English language,[d] and, therefore, disabled from a systematic interference in administrative details. His son, though less incapable, was conscious of his imperfect knowledge of domestic affairs, and, like his father, directed his attention almost exclusively to foreign politics. This tended to reduce the personal authority of the sovereign to a very low ebb,[e] and in the same proportion to increase the influence and authority of the cabinet. But with the accession of George III. a reaction, begun in the preceding reign, set in for a time. Anxious to prove himself a faithful and efficient ruler, and being well qualified for the discharge of the functions of royalty, George III. lost no opportunity of aggrandising his office. Whereupon the power of the crown, which had been weakened and obscured by the ignorance and indifference of his immediate predecessors, became once more predominant. Not satisfied, however, with the exercise of his undoubted authority, the king repeatedly overstepped the lawful bounds of prerogative and the acknowledged limits of his exalted station. It was reserved for William Pitt, whose pre-eminent abilities as First Minister of the Crown empowered him to control successfully the proceedings of the legislature, while retaining the confidence of his sovereign, to vindicate for the Prime Minister the right to initiate a policy for the conduct of all affairs of State, and to urge the adoption thereof equally upon the Crown and upon Parliament, with the weight and influence appertaining to his responsible office, thereby securing the full and entire acceptance by each of the primary maxims of parliamentary government.

[d] Donne, vol. i. p. xxiv.

[e] See *ante*, vol. i. p. 178.

Utility of the Premier's office.

While this has been the effect of the development of the office of Prime Minister upon the position and authority of the sovereign, its result upon the condition of the cabinet has been no less important. In a conversation with Lord Melville on this subject, in the year 1803—which has been fortunately preserved—Mr. Pitt, who was then out of office, dwelt, 'pointedly and decidedly,' upon 'the absolute necessity there is in the conduct of the affairs of this country, that there should be an avowed and real minister, possessing the chief weight in the council, and the principal place in the confidence of the king. In that respect (he contended) there can be no rivality or division of power. That power must rest in the person generally called the First Minister, and that minister ought (he thought) to be the person at the head of the finances. He knew, to his own comfortable experience, that notwithstanding the abstract truth of that general proposition, it is noways incompatible with the most cordial concert and mutual exchange of advice and intercourse amongst the different branches of executive departments; but still, if it should unfortunately come to such a radical difference of opinion, that no spirit of conciliation or concession can reconcile, the sentiments of the minister must be allowed and understood to prevail, leaving the other members of administration to act as they may conceive themselves conscientiously called upon to act under such circumstances.'[f]

The office of Prime Minister, as it is now exercised, is a proof and a result of the necessity which exists in our political system for the concentration of power and responsibility in the hands of one man, in whom the sovereign and the nation can alike confide, and from whom they have a right to expect a definite policy and a vigo-

[f] Stanhope, Life of Pitt, vol. iv. p. 24. 'Pitt always contended that the first minister should be the statesman in actual possession of the confidence of the crown and of the House of Commons, and in this maxim, it appears to me, he was not mistaken.' Earl Russell, Life of Fox, vol. iii. p. 348.

rous administration. Nevertheless, strange to say, this office is still unknown, not only to the law, but also to the constitution, which, as was remarked in Parliament in 1806, 'abhors the idea of a Prime Minister.'[g] Again, in 1829, an eminent statesman, but recently deceased (Lord Lansdowne), observed that 'nothing could be more mischievous or unconstitutional than to recognise in an Act of Parliament the existence of such an office.'[h] Legally and constitutionally no one privy councillor has, as such, any superiority over another. All are equally responsible for the advice they may tender to their sovereign; and when they meet in council the vote of the one who holds the highest office counts for no more than that of any of his colleagues. The Prime Minister is simply the member of the cabinet who possesses pre-eminently the confidence of the crown, and to whom the sovereign has thought fit to entrust the chief direction of the government.[i] But the choice of a premier, however necessary or notorious, must still be regarded as a matter of private understanding, there being no express appointment of any member of the administration to be the Prime Minister.

Unrecognised by the Constitution.

The Premier may be either a peer or a commoner, indifferently. During the hundred years which have elapsed since the accession of George III. the office has been held for nearly half the time by a peer. The distinction, moreover, is personal, not official. It might indeed be conferred on one who held no departmental office whatever.[j]

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[g] Parl. Deb. vi. 278. And see *ante*, p. 120. And Sir R. Peel's remarks, in Mirror of Parl. 1829, p. 802.

[h] Mirror of Parl. 1829, p. 1167. And see Lord Holland's speech, *Ib.* p. 1164.

[i] See Corresp. Will. IV. with Earl Grey, vol. i. pp. 9, 117.

[j] See Comp. to British Almanac, 1847, p. 33. Although both official and parliamentary experience are invaluable qualifications for this office, it is noteworthy that Lord Rockingham in 1765, the Duke of Portland in 1782, and Mr. Addington in 1812, had held no office when they were first made Prime Ministers (Yonge, Life of Lord Liverpool, i. 396 *n.*); and that Lord Bute, the favourite of George III., became Prime Minister before he had ever spoken in Parliament (Campbell's Chancellors, v. 200). William Pitt was made Prime Minister at

With what office usually associated.

Usually, however, the Prime Minister has held the office of First Lord of the Treasury, either alone or in connection with that of Chancellor of the Exchequer. Lord Chatham, it is true, never held either of these places, but while he was Mr. Pitt, and at the time of his acknowledged supremacy in the cabinet—in 1757 to 1761—was a Secretary of State. Afterwards, when he formed a new administration, in 1766, he himself (having then become Lord Chatham) filled the office of Lord Privy Seal. Again, from September 1761 to May 1762, the Earl of Bute was premier, while holding the office of Secretary of State. In 1806, Mr. Fox held the premiership, in connection with the office of Foreign Secretary, Lord Grenville being the First Lord of the Treasury.[k] And we have it on the authority of Sir Robert Peel, that Mr. Canning, had he lived to complete the arrangements connected with the administration which he formed in 1827, shortly before his death, had determined to hold the office of Premier in conjunction with that of Secretary of State for Foreign Affairs,[l] being 'satisfied that there could be no objection to his holding the two offices together, and having the disposal of the church patronage of the country in his hands;' for, according to the law of England, such patronage 'attaches to the office of Secretary of State.' But these were exceptional cases, and ever since 1806 the position of First Minister of the Crown has been inva-

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the age of 24 (*Ib.* 321). In like manner, Fox was appointed a junior Lord of the Admiralty in Lord North's administration, in 1770, when he was only in his 21st year (Edinb. Rev. vol. xcix. p. 4). Lord Castlereagh commenced his public career as Chief Secretary for Ireland at the age of 27. Mr. Addington was placed in the chair of the House of Commons when but little over 30 years old: and Lord Grenville, before reaching that age, had been Speaker of the House of Commons, and Secretary of State. Lord Palmerston became Secretary-at-War when he was but 25 years of age. George Canning was appointed an Under-Secretary of State, at the age of 26 (see Stapleton, Canning and his Times, p. 60). The present Earl Granville was made Under-Secretary for Foreign Affairs at the age of 22 (Rep. Com. on Education, 1865, Evid. 1896).

[k] Report on Off. Salaries, 1850, Evid. 286, 287. Parl. Hist. xvi. 234.

[l] Mirror of Parl. 1829, p. 802. And see Edinb. Rev. vol. cx. p. 73.

riably connected with the office of First Lord of the Treasury.[m]

Thus oscillating to and fro in the progress of successive generations, from the great epoch of the Revolution until now, the powers of the Cabinet Council have gradually attained to maturity, until the entire administration of the affairs of the kingdom, at home and abroad, has been assigned to the responsible advisers of the crown for the time being; leaving to the sovereign little else than the right to offer suggestions, to exert a personal influence upon the public policy, and the conduct of public affairs, with the power—which, however, can be exercised only under certain limitations—of giving or withholding his assent to the recommendations of his responsible ministers. Present position of the Cabinet.

The Cabinet Council, though (like the office of Premier) it is a body unknown to the law and hitherto unrecognised by any Act of Parliament,[n] has now become firmly established and universally recognised as an essential part of our polity. It is, in the words of Lord Campbell, 'in the practical working of the constitution—a separate defined body in whom, under the sovereign, the executive government of the country is vested,' and 'without whom the monarchy could not now subsist.'[o] This definition

[m] Thus, in 1828, when the Duke of Wellington undertook the formation of a ministry, he resigned his office of commander-in-chief, which was then usually held in connection with a seat in the Cabinet, and accepted the office of First Lord of the Treasury. The opinion of parliamentary authorities was decidedly adverse to the union of military and civil supremacy in the same hands.—See Hans. Deb. N. S. vol. xviii. pp. 55, 63, 98.

[n] Hallam, Const. Hist. iii. 253. Macaulay, Hist. of Eng. i. 211. See also the observations of C. J. Fox, and of Mr. Addington, in Parl. Deb. i. 508-514.—A curious illustration of the fact stated in the text recently took place. In the year 1851 a Committee of the House of Commons was appointed to consider of means to prevent the inconvenient crowding of members on their way to the bar of the House of Lords, to attend the opening and prorogation of Parliament. The committee reported a series of resolutions to regulate the attendance of members on these occasions. But on considering the report, notice was taken of a certain priority proposed therein to be assigned to 'Cabinet Ministers,' which was disagreed to by the House, on the ground that these functionaries are unknown to the constitution, and have no legal status, as such, in the country.—Hans. Deb. vol. cxviii. pp. 1927, 1939-1947, 1960.

[o] Campbell, Lives of the Chief Justices, iii. 187, 188.

must be understood as including, not the cabinet merely, but the entire administration, of which the cabinet is the ruling head. The ministry itself comprises the whole assembly of political officers charged with the direction of public affairs, whose tenure of office is dependent upon that of the existing cabinet. 'This body which is styled the *Cabinet*, the *Ministry*, and (not unfrequently) the Government, is invested with two characters. In one of those characters they are ministers of the king as a branch of the Parliament, and of the king as the head of the executive government. In the other, they are virtually a standing committee of the two Houses of Parliament, being respectively members of the Upper and Lower Houses, and preparing and conducting much of their business. As combining the two characters, they may be deemed a small and select body to whom the sovereign Parliament (which consists of king, lords, and commons), delegates its principal functions.'[p] The leading characteristics of the Cabinet Council are thus described by Lord Macaulay, whose personal experience as a politician and statesman gives peculiar weight to his words. 'The ministry is, in fact, a committee of leading members of the two Houses. It is nominated by the crown, but it consists exclusively of statesmen whose opinions on the pressing questions of the time agree, in the main, with the opinions of the majority of the House of Commons. Among the members of this committee are distributed the great departments of the administration. Each minister conducts the ordinary business of his own office without reference to his colleagues. But the most important business of every office, and especially such business as is likely to be the subject of discussion in Parliament, is brought under the consideration of the whole ministry' (or rather, it should be observed, of that section of the ministry which is known as the Cabinet Council). 'In Parliament the ministers are bound to act as one man on

[p] Austin's Plea for the Constitution, p. 7.

all questions relating to the executive government. If one of them dissents from the rest on a question too important to admit of compromise it is his duty to retire. While the ministers retain the confidence of the parliamentary majority, that majority supports them against opposition and rejects every motion which reflects on them or is likely to embarrass them. If they forfeit that confidence, if the parliamentary majority is dissatisfied with the way in which patronage is distributed, with the way in which the prerogative of mercy is used, with the conduct of foreign affairs, with the conduct of a war, the remedy is simple. It is not necessary that the Commons should take on themselves the business of administration, that they should request the crown to make this man a bishop and that man a judge, to pardon one criminal and to execute another, to negotiate a treaty on a particular basis, or to send an expedition to a particular place. They have merely to declare that they have ceased to trust the ministry and to ask for a ministry which they can trust.

'It is by means of ministries thus constituted and thus changed that the English government has long been conducted in general conformity with the deliberate sense of the House of Commons, and yet has been wonderfully free from the vices which are characteristic of governments administered by large, tumultuous, and divided assemblies. A few distinguished persons, agreeing in their general opinions, are the confidential advisers at once of the sovereign and of the estates of the realm. In the closet they speak with the authority of men who stand high in the estimation of the representatives of the people. In Parliament they speak with the authority of men versed in great affairs and acquainted with all the secrets of the State. Thus the cabinet has something of the popular character of a representative body, and the representative body has something of the gravity of a cabinet.'[q]

[q] Macaulay's Hist. of England, iv. 435, 436. And see Grey on Parl. Govt., new edit., p. 23.

These eloquent paragraphs present an admirable summary of the present position of the Cabinet Council in the British constitution. They generalise upon a variety of points which must necessarily receive careful consideration in the remaining sections of this treatise. Meanwhile it should be distinctly understood that while all important questions, which from time to time may occupy the attention of the government, and all plans of action, whether to be carried out by acts of legislation or of administration, are first proposed, considered, and agreed to by the Cabinet, it is nevertheless a deliberative body only, and whatever powers may belong to its members individually by virtue of their respective offices of State, it has no authority to act collectively, except through the instrumentality of the Privy Council, of which technically considered it must still be regarded as a committee.

A deliberative body.

And not only is the existence of the Cabinet Council, as a governing body, unknown to the law, but the very names of the individuals who may comprise the same at any given period are never officially communicated to the public. The *London Gazette* announces that the Queen has been pleased to appoint certain privy councillors to fill certain high offices of State, but the fact of their having been called to seats in the Cabinet Council is not formally promulgated. Until the principle of collective ministerial responsibility was fully established this circumstance occasioned frequent impediments in the exercise of the inquisitorial powers of Parliament. There was no method of ascertaining upon whom to affix the responsibility of any obnoxious measure, and Parliament had no alternative but either to assume that the responsibility rested upon certain individuals holding prominent official rank, or to address the crown to be informed by whom such measures had been advised.[r] No complete lists of existing administrations have ever been published by authority, nor is there any legal record of the names of persons of who

Its members unknown to the law.

[r] See Commons' Journals, ix. 702; x. 298, 300.

any cabinet has been composed.[s] It was not until after the year 1800 that regular lists of the ministry for the time being began to be inserted in the 'Annual Register.' So recently as the middle of the last century, Lord Mansfield, when chief justice of the Court of King's Bench, had a seat in the cabinet during more than one administration, and the fact was not certainly known to Parliament and to the country until several years afterwards.[t] But it is impossible that such a circumstance could now occur because of the publicity attending all ministerial changes, and the full recognition of the doctrine of collective ministerial responsibility for every administrative act.

Appointed by the crown.

The selection of the advisers of the crown is a branch of the royal prerogative that must be exercised by the sovereign himself. It is perhaps the sole act of royalty which, under the existing constitution of Great Britain, can be performed by the sovereign of his own mere will and pleasure. Nevertheless, its performance is necessarily controlled by certain constitutional checks, it being essential to the very existence of parliamentary government that the advisers of the crown should possess, or be able to secure, the approbation of Parliament. We have already traced, in a preceding chapter,[u] the constitutional usage in regard to the choice of ministers by the crown, and have pointed out that while in theory it is presumed that the sovereign is free to select whom he will as his instruments for carrying on the government of the country, he is practically obliged, by the spirit of the constitution, to form his administration of men who can work harmoniously with the legislature, and more particularly with the House of Commons. It was also shown that while in the first instance the sovereign may be presumed to have acted without advice, when he dismisses one ministry and appoints another, yet that in point of fact the incoming administration are constitutionally

[s] Parl. Deb. vi. 309. *Ibid.* 303.

[t] See *ante*, vol. i. p. 210.

responsible to Parliament for the circumstances under which they have accepted office, including the dismissal of their predecessors, if they are prepared to carry out the policy by which such a change was occasioned.

Upon the resignation or dismissal of a ministry it is customary for the sovereign to send for some recognised party leader, in one or other House of Parliament, and entrust him with the formation of a new administration. Or, should the position of parties be such that no particular person appears to the king to be specially eligible for the post of Prime Minister, he may empower anyone in whom he can repose sufficient confidence to negotiate on his behalf for the formation of a ministry, and to present to him the names of the statesmen who are willing to serve his Majesty in that capacity.[v]

The crown chooses the Premier, who recommends his colleagues.

By modern usage, it is understood that no one but the Premier is the direct choice of the crown. He is emphatically and especially the king's minister, the one in whom the crown constitutionally places its confidence, and the privilege is conceded to him of choosing his own colleagues; subject, of course, to the approbation of the sovereign. The list of persons selected to compose the new ministry, and who have consented to serve, is submitted to the king, who may approve or disapprove of it, in whole or in part, even to the exclusion from office of anyone personally objectionable to himself.[w] In like manner when any vacancy occurs in an existing ministry, it is the privilege of the Prime Minister to recommend some one chosen by himself to fill up the same. If his colleagues differ with him in the selection he has made, they must either acquiesce in the choice or resign their own offices.[x]

When negotiations are set on foot between the sovereign and any statesman to whom he may be desirous of entrusting the direction of public affairs, such negotiations

[v] See *ante*, vol. i. p. 224.
[w] See *ibid.* p. 225.
[x] Stanhope, Life of Pitt, vol. iv. p. 288.

will naturally involve, to a greater or less extent, mutual stipulations and conditions. On the one hand, the sovereign may set forth the policy which, in his judgment ought to be pursued for the national good, and may stipulate for the carrying out of the same, as the condition on which alone he is willing to accept of their advice and assistance in the government of the country; and it will be for the consideration of the statesmen who are invited to accept office upon these terms, whether they are in a position to carry out such a policy, consistently with their own convictions, their party obligations, and their assurance of adequate parliamentary support. On the other hand, an incoming ministry are warranted in requiring from the king, as a condition to their acceptance of office, any assurances which are not incompatible with the independence of the crown, or with the legitimate exercise of the royal prerogative. But a ministry have no right to bind either themselves or their sovereign by pledges in regard to proceedings in hypothetical cases; or to forestall their own freedom of advice in respect to contingencies not immediately occurrent, but that may afterwards arise.[y]

Stipulations and conditions.

Pledges.

This point was finally established, by general consent, as a result of the dismissal of the Grenville ministry, in 1807, by George III., for recording, in a Minute of Council, that it was their right and duty to submit their views upon the Catholic question—which they had consented to forego, for a time, in deference to the opinions of the king—at any future period, when they might see fit to urge them. The king insisted upon the withdrawal of this minute, and the substitution of a pledge never again to propose for his consideration

[y] See the conduct of Pulteney, when George II. offered him full power to construct a ministry, after the resignation of Sir Robert Walpole, provided he would pledge himself to screen Sir Robert from prosecution (Mahon's Hist. of England, vol. iii. pp. 162-165). In 1779 during the progress of the American war, George III. declared that he should expect a written declaration from all new ministers that they would persevere in the contest, and never consent to American independence (May, Const. Hist. vol. i. p. 42). But in 1782, the House of Commons expressed such a decided aversion to a continuance of the war, that the king was obliged to agree that it should be abandoned. —*Ibid.* p. 48.

anything in favour of the Catholic claims. Upon their refusal to comply with this demand, his Majesty dismissed them from his councils. The constitutional question involved in the conduct, both of the king and of his ministers, was fully discussed in Parliament, and resolutions were submitted to both Houses, declaring 'that it was contrary to the first duties of the confidential servants of the crown to restrain themselves by any pledge, express or implied, from offering to the king any advice that the course of circumstances might render necessary for the welfare and security of any part of the empire.' The doctrine embodied in this resolution met with little opposition in either House, although, as a matter of expediency, and to avoid collision with the new ministry, it was agreed that no direct vote should be taken thereupon.[z] But we may freely accept the conclusions of May on this subject, when he says that 'as a question of policy, it had obviously been a false step, on the part of ministers, to give expression to their reservations in the minute of the cabinet. They had agreed to abandon the Bill which had caused the difference between themselves and his Majesty; and by virtue of their office, as the king's ministers, were free on any future occasion to offer such advice as they might think proper. By their ill-advised minute they invited the retaliation of this obnoxious pledge. But no constitutional writer could now be found to defend the pledge itself, or to maintain that the ministers who accepted office in consequence of the refusal of that pledge had not taken upon themselves the same responsibility as if they had advised it.'[a]

It was charged against Mr. Canning that, upon his acceptance of office, in 1827, he had given George IV. a pledge in respect to the Roman Catholic question, similar to that which had been refused by the Grey ministry in 1807. This accusation received considerable currency at the time, and was afterwards repeated in the private diary of the Duke of Buckingham, on the alleged authority of the king himself. But Sir Robert Peel, who was the friend and follower of Canning, discredits the impu-

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[z] Parl. Deb. April 9 and 13, 1807; Mr. Speaker Abbott's Comments on the Debate; Colchester Diary, vol. ii. p. 119; and *ante*, vol. i. pp. 89–91.

[a] May, Const. Hist. i. 96, 97. See also Sir Robert Peel's speech in the House of Commons on the 2nd of March, 1835, wherein he declared that it would be 'unbecoming in him, as a minister of the crown, to consent to place any prerogative of the crown in abeyance, or, upon the principle of a hypothetical case, to pledge himself, as a minister of the crown and a privy councillor, how he should advise the crown as to the course it should pursue.'—Annual Register, 1835, p. 110.

tation, and it appears to be now admitted that it was wholly unfounded.[b]

The constitutional doctrine on this subject has since received still more authoritative confirmation.

Freedom of action between the crown and ministers.

In 1851, upon the resignation of the Russell ministry, Lord Stanley (now Earl of Derby) was invited by the Queen to form an administration; but was unable to succeed, owing to the Conservative party being in a minority in the House of Commons. In giving to the House of Lords explanations of his conduct during this political crisis, Lord Stanley adverted to an erroneous impression which prevailed, that his relinquishment of the attempt to construct a cabinet arose from the refusal of her Majesty to grant him the power of dissolving Parliament whenever he might think it desirable to do so: a dissolution at the time of his accepting office being confessedly impracticable, owing to the state of the public business, and unadvisable perhaps on other grounds. This rumour, his lordship declared, had not the shadow of foundation in fact. He had not ventured to recommend a dissolution at this time, because he considered it impossible; and he added, 'I hope I know my duty to my sovereign too well to insist upon a pledge upon a question with respect to which no sovereign ought to give a pledge. On the other hand, I am confident that her Majesty knows too well, and respects too highly, the mutual obligations, if I may venture to use the phrase, which subsist between a constitutional sovereign and her responsible advisers, to refuse to me, or to any minister who may be honoured with her confidence, the ordinary powers entrusted to a minister, or to depart from the ordinary understanding of being guided by his advice; and I am authorised, on the part of her Majesty, distinctly to state that no person would be justified in saying, or holding out the belief that if I had felt it my duty to recommend to her Majesty the dissolution of Parliament, her Majesty's consent would have been withheld.' [c]

If a complete freedom of action, in respect to advice to be offered to the sovereign, is essential to the due independence of a ministry from unconstitutional influence on the part of the crown, it is no less imperative that they should suffer no encroachment upon their liberty of action from any other quarter.

Thus, when Lord John Russell was urged, in the House of Commons, on July 24, 1854, to agree to a proposal for the holding of an

[b] Peel's Memoirs, vol. i. p. 275. vol. viii. p. 206. And see Knight's Pop. Hist. of Eng.

[c] Hans. Deb. vol. cxiv. p. 1014.

autumnal session of Parliament, on account of the disturbed state of Europe, he refused, 'on the part of the ministers of the crown, to accept at the hands of members restrictions on their freedom in giving to the sovereign such advice as they may think proper. We must be left at full liberty to give such advice as the circumstances of the times at the time may seem from us to demand . . . we must be unfettered as to the time at which we may advise her Majesty to take the advice of Parliament.'[d]

Stipulations upon accepting office.

Authorities having been adduced in proof of the irregularity of pledges, in regard to advice to be tendered, or received, in hypothetical cases, between the sovereign and his constitutional advisers, it may be desirable to furnish a few examples of stipulations made, as conditions precedent to the acceptance of office. Such stipulations are of frequent occurrence, and if kept within due bounds are quite justifiable. For the king has an undoubted right to require that any administration about to be formed shall be constructed upon certain definite principles, which would in his judgment best promote the interests of the nation. And on the other hand, ministers, before agreeing to assume the responsibility of office, must be free to stipulate for permission to carry out such a policy as they may deem essential for the public good. Security against abuse, in either case, is afforded by the necessity for mutual agreement upon a line of action that will satisfy their own sense of right, and will be likely to obtain the approval of Parliament.

In 1765 the Grenville ministry consented to remain in office, after fruitless attempts on the part of the king to form another administration, upon condition that Lord Bute, who had made himself notorious, by frequent interferences, in secret, between the king and his ministers, should not be suffered to take part in his Majesty's councils 'in any manner or shape whatever.' To this the king agreed, and there is every reason to believe that he kept his word.[e] Similar conditions were made by the Rockingham administration in 1766, and were acquiesced in by the king.[f] On the other hand, the king himself, in 1779, determined to admit none to his councils without exacting from them a pledge to preserve the integrity of the empire, and to prosecute with vigour the war against the

[d] Hans. Deb. vol. cxxxv. p. 612. And see pp. 716, 764.

[e] May, Const. Hist. i. 27.

[f] *Ibid.* 29.

rebellious American colonies. So long, indeed, as ministers were willing to be personally responsible for such a policy, and could carry Parliament with them, the right of the king to impose such conditions cannot be questioned, without reducing the sovereign to a mere automaton. But ere long George III. was himself obliged to submit to the urgent representations of the House of Commons in favour of peace with America. Lord North, his favourite minister, who had for a considerable period persisted in the war policy, to please the king, and against his own secret convictions, was forced, by an adverse vote of the House, in 1782, to declare that he was prepared to advise the king to agree to propositions of peace. This tardy concession came too late to save the ministry; they were soon afterwards obliged to resign office on account of the hostility of the House of Commons. On the retirement of Lord North, the king was reluctantly compelled to call to his counsels the Rockingham administration, whose first stipulation was, the concession of independence to America.[g] Again, upon Mr. Pitt's return to power, in 1804, the king stipulated that he should not again renew the agitation of the Catholic question, the advocacy of which had led to his dismissal from office in 1801. Mr. Pitt consented to these terms, but contrived to evade a more stringent condition, which the king sought to impose upon him.[h]

Number of the cabinet.

The cabinet is composed of the more eminent portion of the administration, but it does not ordinarily include more than a fourth part of the same. Its numbers, however, are indefinite and variable; for it is competent to the statesman who is charged with the formation of a ministry, with the consent of the sovereign, to put as many persons as he pleases into the cabinet.[i] The first cabinet of George I. consisted of eight members, of whom not more than five or six were in regular attendance, the others being either resident abroad, or not invariably invited to attend the council meetings.[j] The first cabinet of George III. (in 1760) consisted of fourteen members, of whom eight were of ducal rank, five earls, and but one a commoner.[k] In 1770, on the first formation of his ministry, Lord North introduced seven persons

[g] May, Const. Hist. i. 42, 47, 51.

[h] *Ibid.* p. 85. And see Stanhope, Life of Pitt, vol. iii. pp. 310–313; Jesse, Life of George III. vol. iii. p. 537.

[i] Yonge, Life of Lord Liverpool, vol. iii. pp. 210–212. Rep. Com. on Official Salaries, Com. Papers, 1850, vol. xv. Evid. 1411.

[j] Mahon, Hist. of England, i. 153.

[k] Jesse, Life of George III. vol. i. p. 59.

only into the cabinet. The Marquis of Rockingham's cabinet, in 1782, consisted of nine or ten persons. That of Earl Shelburne, in the following year, of eleven.[l] In 1783 Mr. Pitt's cabinet was limited to seven members, of whom all, except himself, had seats in the House of Lords.[m] After the death of Mr. Pitt it became customary for the cabinet to consist of from ten to sixteen individuals. At the present time (1869) it comprises fifteen members, which has been the limitation observed under several successive administrations. This number is 'as large as it ought to be, and it seems to be generally adopted as such by both parties. There are general and other reasons which make it very undesirable to extend the number of the cabinet.'[n] In fact Sir Robert Peel, in 1835, expressed his opinion 'that the executive government of this country would be infinitely better conducted by a cabinet composed of only nine members, than by one of thirteen or fourteen.'[o]

Selection of men to form a ministry.

The task of forming an administration is left almost exclusively with the Prime Minister,[p] and yet he can scarcely be regarded as unfettered in the choice of his colleagues, inasmuch as he is obliged to select them from amongst the most prominent and able men of his own party who are likely to command the confidence of Parliament, and the selection of individual ministers is sometimes the result of a combination of parties rather than the act of a Prime Minister himself.[q] It has been well observed, by an able political writer, that 'the position of most men in Parliament forbids their being invited to the cabinet; the position of a few men ensures their being invited. Between the compulsory list, whom he must take, and the impossible list, whom he cannot

[l] Bentham's Works, vol. ix. p. 218, *n.*

[m] Stanhope's Pitt, i. 71, 165.

[n] Earl Granville, Rep. Commons' Com. on Education, 1865; Ev. 1883.

[o] Mirror of Parl. 1835, p. 1797.

[p] See *ante*, p. 146.

[q] Rep. on Off. Salaries, 1850; Evid. 285, 299. Moreover, aristocratic prejudices on the part of influential statesmen have often operated to debar acknowledged talent from its rightful position in the Cabinet. Witness the cases of Edmund Burke, and of George Canning.—See Campbell's Chancellors, iv. 97, *n.*

take, a Prime Minister's independent choice in the formation of a cabinet is not very large; it extends rather to the division of the cabinet offices than to the choice of cabinet ministers. Parliament and the nation have pretty well settled who shall have the first places; but they have not discriminated with the same accuracy which man shall have which place.'[r]

The following are officers of State, who, according to modern usage, would, under any circumstance, form part of the cabinet, namely, the First Lord of the Treasury, the Chancellor of the Exchequer, the Principal Secretaries of State, now five in number, the First Lord of the Admiralty, and the Lord High Chancellor.[s] But it is also customary to include amongst the number the Lord President of the Council and the Lord Privy Seal. Several other ministerial functionaries usually have seats in the cabinet; never less than three, and rarely so many as seven or eight, in addition to those above mentioned. The selection is made either from amongst such of the principal officers of State, and heads of departments, having seats in Parliament, whose rank, talents, reputation, and political weight would be likely to render them the most useful auxiliaries; or from those whose services to their party, while in Opposition, may have given them the strongest claims to this distinction: in other words, the matter is commonly decided according to what may be considered the claims of the individual, rather than the special importance of the office he may hold. In the choice of persons to fill this honourable and responsible position it has been aptly remarked that it is of the highest consequence that they should be men looking to the public good rather than to private advantage; sufficiently independent in their judgment to originate or adopt a progressive system of policy; and sufficiently independent in their personal character to resist the

[r] Bagehot on the Cabinet, Fortnightly Review, No. i. p. 10.

[s] Rep. on Off. Sal. 1850, Evid. 325. (Opinion of Sir Robert Peel.)

exactions of the sovereign, or the impulses of the people, when these are at variance with the permanent interests of the State.[t]

A seat in the cabinet without office.

It occasionally happens that statesmen, possessed of high character and experience, are admitted to a seat in the cabinet without being required to undertake the labour and responsibility of any departmental office. This practice dates back to the reign of Charles I., when we find Hyde, afterwards Lord Clarendon, a member of the king's 'inner cabinet,' without office.[u] In 1757, we read that ex-Chancellor Hardwicke,[v] and, in 1770, that General Conway[w] were respectively members of the cabinet, without office. Of late years the practice has been of frequent occurrence; but, owing to the difficulty of ascertaining with certainty of whom the cabinets previous to the present century consisted, it is not easy to cite examples; except as they may have been casually noticed in the pages of history. We find it alluded to, however, as a recognised usage, in a debate in the House of Lords, in 1806.[x] In 1807, Earl Fitzwilliam is included in the list of Lord Grenville's administration, as having a seat in the cabinet without office. In 1812, the name of the Marquis Camden is inserted in the list of cabinet ministers, as given in the 'Annual Register,' but without office; and, in 1820, we notice a similar entry in reference to the Earl of Mulgrave. Subsequently, we find that the Duke of Wellington was a member of the cabinet without office, on different occasions, for several years previous to his death. So also were the Marquis of Lansdowne and Lord John Russell, together in 1854, and the latter alone in 1855 and 1856. Lords Sidmouth and Harrowby, moreover, continued in the cabinet for some time after their resignation of office; the former remaining for two years, after resigning the Home Secretaryship in 1822,

[t] Sir G. C. Lewis, in Edinb. Rev. vol. cviii. p. 285.
[u] Campbell's Chancellors, iii. 132.
[v] *Ibid.* v. 143.
[w] Donne, Corresp. Geo. III. vol. i. p. 12, *n.*
[x] Parl. Deb. vi. 327.

and until he retired from public life; and the latter for a short period after his resignation of office in 1827.[y]

No constitutional rule is violated by this practice. The sovereign, in the exercise of his undoubted prerogative, may summon whom he will to the Privy Council; and any member of this body is eligible to a seat in the cabinet. But while the principal executive officers of State are necessarily included in the Cabinet Council, it would be an undue limitation of the choice of the crown to declare that none but such as were able and willing to take charge of an executive department should be permitted to sit therein; thereby depriving the sovereign of the assistance of men who could give him the best advice, and render valuable assistance in Parliament upon questions of public policy. The choice of the sovereign in this particular should only be restricted in respect of persons who hold offices that are constitutionally incompatible with the position of a responsible adviser of the crown, or who have not and cannot obtain a seat in Parliament.[yy]

It is true that the appointment of a member of the House of Commons to a seat in the cabinet, without office, is open to greater objection than in the case of a peer. For the spirit of the statute of Anne would seem to require that all members accepting ministerial functions should offer themselves to their constituents for re-election.[z] But the letter of the law is undoubtedly applicable to such members only as have accepted salaried offices,[a] and the instances above quoted, of General Conway and of Lord John Russell, are sufficient to prove that there has been no disposition on the

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[y] Haydn's Book of Dignities, pp. 88, 96. Pellew's Life of Sidmouth, iii. 396.

[yy] It has been doubted whether a seat in the Cabinet without office should be given to one who has never held office; see Yonge, Life of Lord Liverpool, ii. 377, iii. 204–206.

[z] See Mr. Walpole, in Hans. Deb. vol. cxxx. p. 383. And see *post*, p. 365.

[a] See *post*, p. 260.

part of the House of Commons to enforce a strained interpretation of the law in this respect.

Moreover, the occasional appointment of a member of either House of Parliament to a seat in the cabinet, without office, is no infringement upon the principle of ministerial responsibility. Ministers of the crown are responsible by reason of their being privy councillors, not as members of 'the cabinet,' which, as a separate institution, is, as we have seen, unknown to the law. In ordinary cases, it is true, the resignation of a seat in the cabinet is necessarily accompanied by the relinquishment of a high lucrative office; but it is unquestionable that the possession of a seat at the Council Board, even without office, and, therefore, destitute of pecuniary advantages, furnishes more substantial means of influence than is conferred by any office in the State, however lucrative, to which a similar mark of the confidence of the crown and of Parliament is not attached; and that, therefore, the obligation to relinquish this exalted position upon the withdrawal of the confidence of Parliament from an existing ministry is as severely felt in the one case as in the other.[b] In former times, when the members composing the cabinets, for the time being, were generally unknown, except by means of the offices they held, it is possible that such a practice might have given rise to abuse; but now-a-days there is a sufficient safeguard in the public notoriety which attaches to the person of every cabinet minister, and in the fact that he receives his appointment, not merely that he may preside over a particular executive department, but chiefly in order that he may be a mouthpiece and champion of the government in one or other of the Houses of Parliament. And should circumstances render it advisable to have recourse to such a proceeding, it is as strictly constitutional for Parliament to address the crown for the removal of a particular person from the list of the Privy Council, whether he be

[b] See Parl. Deb. vi. pp. 288, 309.

an office holder or not, as it is to ask for the dismissal of a ministry on the ground that it has forfeited the confidence of Parliament.[c]

Who ought not to be in the cabinet.

In addition to the officers of State above enumerated, of whom the Cabinet Council is now composed, there are two or three other functionaries who formerly used to be occasionally included in the cabinet, but who have ceased of late years to be considered as eligible for that position. Of these, the most important example is that of the *Lord Chief Justice of the Court of King's Bench*, whose case is deserving of particular notice.

Judicial officers.

Case of Lord Ellenborough.

Prior to the year 1806, there had been one or two instances of persons holding this office being made members of the cabinet. Lord Hardwicke, in 1737, while Lord Chief Justice, was, for a brief period, and under peculiar circumstances, a cabinet minister. While presiding at the Court of King's Bench he was appointed Lord Chancellor, with a seat in the cabinet, but did not resign his chief justiceship until nearly four months afterwards.[d] Afterwards, Lord Mansfield sat in the cabinet for several years, while he was Lord Chief Justice. But neither of these instances excited public attention at the time. In 1806, however, the prime minister, Lord Grenville, being desirous of strengthening his administration by the assistance of Lord Ellenborough, then Chief Justice of the King's Bench, recommended him to the king for the office of Lord President of the Council, which carried with it a seat in the cabinet. The appointment took place, but soon afterwards a resolution was proposed in the House of Lords, on March 3, that it was highly inexpedient, and tended to weaken the administration of justice, to summon to any committee or assembly of the Privy Council any of the judges of his Majesty's courts of common law. On the same day three resolutions were proposed in the House of Commons, which were to the same general effect, but more carefully framed. They set forth that it was 'highly expedient that the functions of a minister of State, and of a confidential adviser of the executive measures of the government, should be kept distinct and separate

[c] See the case of Lord Melville, in 1805, Parl. Deb. vol. iv. pp. 335, 344-355; Stanhope, Life of Pitt, vol. iv. pp. 283, 294.

[d] Harris' Life of Hardwicke, i. 358. In like manner Lord Eldon, when appointed Chancellor, in 1801, declined to relinquish his office of Chief Justice of the Common Pleas for several weeks, lest the state of the king's health should lead to a change of ministry, and so, to use his own expression, he might 'fall between two stools.'—Campbell's Chancellors, vi. 307. And see *ib.* vii. 137.

from that of a judge at common law;' and that the summoning of the Lord Chief Justice to this position was 'peculiarly inexpedient and unadvisable, tending to expose to suspicion, and bring into disrepute the independence and impartiality of the judicial character, and to render less satisfactory, if not less pure, the administration of public justice.' The resolution in the Lords was ably advocated by Lords Eldon and Hawkesbury, and those in the Commons by Mr. Canning, Lord Castlereagh, and others; nevertheless the ministry was sustained in both Houses, and the resolutions were rejected in the Lords without a division, and in the Commons by a large majority.

The principal arguments urged in support of the resolutions were to the effect that while it was admitted that the king had an abstract right to summon whom he would to the Privy Council, and by consequence, to a seat in the cabinet, yet that it was highly inexpedient, and opposed to the principles of good government, for a seat in the cabinet to be held by anyone in conjunction with a permanent non-political office. Otherwise it might happen that an individual in his capacity of minister of the crown might incur odium and the censure of Parliament for political conduct, so as to occasion his dismissal from the councils of his sovereign, and yet still remain a public servant, although necessarily weakened in his efficiency by the stigma that had fallen upon him for political faults. Such a position is always to be deprecated, but more especially in the case of a judge, whose tenure of office is during good behaviour, and who is not removable except upon the joint Address of the two Houses of Parliament.

Case of Lord Mansfield.

The case of Lord Mansfield was the one chiefly relied upon by the defenders of Lord Ellenborough's appointment, that of Lord Hardwicke having been too exceptional to be taken as a precedent, and no instances prior to the Revolution being now in point, because of the great principle of the independence of the judges which was then asserted,[e] and was subsequently confirmed by the Act of 1 George III. Lord Mansfield's occupancy of a seat at the Council Board, whilst holding a judicial office, was, however, unknown at the time to either House of Parliament, and was not made public until several years after he resigned the same. It was also alleged that Lord Mansfield, after holding a seat in the cabinet from 1757 to 1765, became convinced of the impropriety thereof, and withdrew from it in 1765, expressing regret for his having been induced to continue so long in an indefensible position;[f] and that nevertheless he did not escape from public reproach, and the loss of popularity

[e] See Hallam, Const. Hist. vol. iii. p. 262.

[f] See Campbell's Lives of the Chief Justices, vol. ii. pp. 450, 460, 466, 497.

which overtook him so soon as the fact became known, that he had been a cabinet minister whilst holding a permanent judicial office. Furthermore, the dictum of Blackstone was cited, in condemnation of this appointment, wherein he said that 'nothing is more to be avoided, in a free constitution, than uniting the provinces of a judge and a minister of State.' [g]

The Lord Chancellor.

And here it may be observed, that the position of the Lord Chancellor, as a member of the cabinet, appears, at first sight, open to similar objections, inasmuch as he also combines the functions of a judge with those of a minister. But his situation differs materially from that of the common law judges. He only decides questions of property, and, with the exception of trials before the House of Peers has no jurisdiction in matters of criminal law. Moreover, apart from his duties as principal legal adviser of the crown, he is necessarily concerned in advising upon weighty affairs of State; and, as a natural consequence, is properly removable from office with every change of administration.

Lord Ellenborough.

To revert to the case of Lord Ellenborough. No doubt there have been numerous instances, both before and since the Revolution, wherein common law judges, in their capacity of privy councillors, have been summoned to attend meetings of the Privy Council, or of committees thereof, which have been specially convened to take evidence in certain State enquiries concerning treasonable conspiracies, public riots, or the like. But such services are totally distinct from deliberations in the cabinet upon points of public policy, which are determined upon political considerations. Recognising this obvious distinction, it will be seen that the resolution proposed to the House of Lords, in reference to Lord Ellenborough's appointment, was technically incorrect, inasmuch as the judicial investigations in question are formally entrusted to a committee of the Privy Council, which includes not only the judges, but cabinet ministers and others, who are likely to be of service in prosecuting the inquiry.

On the other hand, the resolutions against this appointment, which were submitted to the House of Commons, though they failed to receive the sanction of the House at the time, owing to its being made a ministerial question, were undeniably correct in principle. Such an appointment would now be regarded as open to grave constitutional objections; [h] not because it would be an instance of a seat in the cabinet disconnected from an *administrative* office—for this we have seen is not essential—but because, being an *independent*

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[g] Black. Com. b. i. c. VII. p. 269. And see Brougham, Brit. Const. pp. 318, 359.

[h] See May, Const. Hist. vol. i. p. 86; Bowyer, Const. Law, p. 173; Campbell's Chief Justices, vol. iii. pp. 184–192. And, as to Mr. Fox's doubts on the subject, see Brougham's Statesmen, 3rd series, p. 219.

judicial office, it is incompatible, on true constitutional principles, with the position of a responsible adviser of the crown. For however pure might be the conduct of one in such a situation, he would be sure to bring suspicion upon the administration of justice before him in all political cases. Moreover, as has been pertinently suggested by Lord Campbell, 'the mischief is not confined to the period when he actually continues a cabinet minister; for when his party is driven from power, although all his colleagues are deprived of their offices, he still presides in the Court of King's Bench, and there is much danger that in government prosecutions he will be charged with being actuated by spite to his political opponents.'[i]

Fortified by the decision of Parliament in his favour, Lord Ellenborough retained for a while his place at the Council Board; but before the end of the year a change of ministry occurred, which compelled him to relinquish it. The mature and unbiassed opinion of Parliament upon the question may be gathered from a debate in the House of Lords on July 7, 1837, upon the Lords' Justices Bill, wherein the union of political functions with those of permanent judicial offices was unanimously reprobated by the highest legal and constitutional authorities. The son of the late Lord Ellenborough informed the House, upon this occasion, that he had heard his father say that, while he thought those who defended his appointment to a seat in the cabinet had 'very much the best of the argument,' nevertheless, if the thing were to be done again, he should not act as he had done.[j]

Archbishop of Canterbury.

The *Archbishop of Canterbury* appears in the list of cabinet ministers during the administration of Sir Robert Walpole, though not as a member of the 'interior council.'[k] Contemporary memoirs represent him, at this period, as taking an active part in politics, and conferring with his colleagues on affairs of State.[l] But we may safely conclude that no similar appointment would now take place, not only because of the altered relations between the Established Church and the State, arising out of the Roman Catholic Emancipation Act, and the repeal of the civil disabilities of dissenters, but on account of the altered state of public opinion in reference to the active participation of clergymen in political affairs.[m] Both the

Campbell's Chief Justices, vol. iii. p. 188.

[j] Mirror of Parl. 1837, p. 2166.

[k] Haydn's Book of Dignities, p. 92.

[l] Harris's Life of Hardwicke, vol. i. p. 383; vol. iii. p. 453.

[m] See an article in the Law Magazine for May, 1862, on Holy Orders, as disqualifying for the House of Commons or the Bar.

Archbishops of Canterbury and York, however, claim a prescriptive right to be summoned to the Privy Council; and a similar honour is usually conferred upon the Bishop of London. The claim of the Archbishop of Canterbury to a seat in the Privy Council dates back to ancient times, when this dignitary occupied a very prominent and influential position in the government of the country.[n]

Master of the Mint.

The *Master of the Mint* is another functionary who used to form part of the administration, with occasionally a seat in the cabinet, but who is now excluded therefrom. This office is one of much responsibility, and from an early period in the reign of George III. was accounted of high political consideration, and always filled by a prominent member of the existing ministry. This led to its being regarded very much in the light of a sinecure; and it became usual, at length, that it should be held in conjunction with some other public department. Pursuant, however, to the recommendation of a Royal Commission, in 1849, on the constitution and management of the Mint—which was confirmed by the Commons' Committee on Official salaries in 1850—the Mastership of the Mint has ceased to be a political office, and is now made permanent, the incumbent being the working head of a numerous establishment, under the superintendence of the Treasury.[o] A similar arrangement in regard to the office of First Commissioner of Public Works was advised by a committee of the House of Commons, in 1860, who were of opinion that great public advantages would result from this department being made permanent and non-political,[p]

[n] In the 10th Rich. II. the Archbishop of Canterbury delivered to Parliament a solemn protest, claiming for himself and his successors the right of being present at all the king's councils, whether general, or special, or secret (Rot. Parl. vol. iii. p. 223). The Archbishop of York also asserts his prescriptive right to be one of the king's councillors; Nicolas, Pro. Privy Coun. vol. i. p. iii. And See Brodrick's Judgments of the Privy Council, introd. lxiv.; Murray's Handbook of Church and State, p. 105.

[o] Rep. Com. on Off. Salaries, Commons' Papers, 1850 (vol. xv.), p. vi. Evid. 140, 142, 1193. Parkinson's Under Government, p. 115. Haydn's Book of Dignities, p. 200.

[p] Rep. on Misc. Exp. Commons' Papers, 1860, vol. ix. p. 476.

but the government have expressed a decided objection to the proposed alteration upon constitutional grounds.[q]

Commander-in-Chief.

The office of *Commander-in-Chief* is one which, when held by the Duke of Wellington, was associated with a seat in the cabinet so long as his political friends were in power. Afterwards, when a Whig ministry came in, the Duke was retained in office, but the post was made non-political; and has continued to be so regarded ever since.[r]

Ministers not of the Cabinet.

Having completed the enumeration of the officers of State of whom the Cabinet Council is properly composed, and of those who, for various reasons, have ceased to be considered eligible for this high position, we proceed to designate the offices that constitute the Administration, apart from, and beside those included in the Cabinet. The following list includes all the offices which, in addition to those held by cabinet ministers, are necessarily vacated on a change of ministry.[s] Certain of the most eminent of these functionaries are invariably admitted into every cabinet, but no particular rule or custom is observed in their selection; personal considerations, as has been already remarked, influencing the choice of the premier in this respect more than considerations connected with the relative importance of the offices themselves:—

Five junior Lords of the Admiralty.
Three junior Lords of the Treasury.
Chief Commissioner of Works and Public Buildings.
Chancellor of the Duchy of Lancaster.
President of the Board of Trade.
Postmaster-General.
Paymaster-General.
President of the Poor Law Board.

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[q] Hans. Deb. vol. clxvi. p. 1616. And see *post*, p. 482.

[r] See further on this point, *post*, p. 564.

[s] See Murray's Handbook, p. 102, and Dodd's Manual of Dignities, p. 309; revised and corrected from the latest official lists.

President of the Board of Health, and Vice-President of the Committee of Council for Education.

Two joint Secretaries of the Treasury.

First Secretary of the Admiralty.

Parliamentary Secretary to the Poor Law Commission.

Parliamentary Under-Secretaries for the Home Department, for Foreign Affairs, for the Colonies, for War, and for India.

Judge Advocate General.

Attorney-General and Solicitor-General.

For Scotland: the Lord Advocate, and the Solicitor-General.

For Ireland: the Lord Lieutenant (who is invariably a peer), the Chief Secretary, the Lord Chancellor,[t] the Attorney-General, and the Solicitor-General.

Also the following officers of the Royal Household: the Lord Steward, the Lord Chamberlain, the Master of the Horse, the Treasurer, Comptroller and Vice-Chamberlain, the Captain of the Corps of Gentlemen-at-Arms, the Captain of Yeomen of the Guard, the Master of the Buckhounds, the Chief Equerry or Groom in Waiting, and Clerk Marshall, the Mistress of the Robes, and the Lords in Waiting.

Officers liable to removal on a change of ministry.

Some changes are occasionally made amongst the ambassadors to the principal foreign courts, and also among the colonial governorships, upon a change of ministry; but no invariable rule prevails in this respect. It is, of course, competent to any administration, upon assuming the government of the country, to require the removal of these, or of any other public functionaries, whom it may be desirable, for political reasons, to displace; but a wise discretion is exercised on this point, with a view to encroach as little as possible upon the permanent element of the public service, for reasons that will be hereafter

[t] The Lord Chancellor of Ireland is expressly disqualified from sitting in the House of Commons by the Act 1 & 2 Geo. IV. c. 44. This is the only office in the list which, if held by a commoner, is incompatible with a seat in that chamber.

explained. And it is held that the continuance in office of any such functionary, under successive administrations, involves no compromise of his private political opinions.[u]

Private secretaries.

The office of private secretary to a member of the government, being purely a personal appointment, is necessarily relinquished on the minister resigning office.[v]

The administration.

The members of the administration, while they may vary in number, according as it is deemed expedient to combine two offices in the hands of one person—or to provide that a particular office shall be made permanent and non-political, or the reverse—rarely exceed fifty, or, at the most, sixty individuals. These gentlemen hold their appointments during pleasure, a tenure which was anciently universal, and still prevails in theory with regard to nearly every office held under the crown; the exception being in the case of the Judges, the Comptroller and Auditor-General, and similar public functionaries, who are made, by Act of Parliament, independent of the crown, and who are appointed during good behaviour.[w]

Must act together.

All the members composing an administration are understood to concur in general principles of public policy and legislation; and, if they possess seats in Parliament, are expected to co-operate together in all matters not specifically agreed upon as open questions. They all resign when the cabinet retires, or is dismissed, and their offices are placed at the disposal of the statesman who is

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[u] Dodd's Manual of Dignities, p. 309. And see *post*, p. 505.

[v] Private secretaries of cabinet ministers receive no salary, if they have a seat in the House of Commons, otherwise they are allowed 300*l.* a year, in addition to the salary they may derive from the department to which they belong. (Report on Off. Salaries, Com. Papers, 1850, vol. xv.; Evid. 27-29.) Private secretaries to heads of departments, not in the cabinet, are allowed 150*l.* a year. (Rep. on Public Offices, Com. Papers, 1854, vol. xxvii. p. 355.) Private secretaryships in the civil service are generally considered as corresponding to a post on the staff of the army, and do not interfere with the position which their occupants may hold in any permanent department. Almost all these functionaries hold their appointments in connection with a clerkship, either in the office of their chief, or in some other branch of the public service. —Rep. of Committee on Diplomatic Service, Commons' Papers, 1861, vol. vi.; Evid. 2125.

[w] See *ante*, vol. i. p. 389.

nominated by the sovereign as the head of the new ministry.

Among the offices enumerated in the foregoing list, some will be found that partake of the nature of sinecures; or that, at any rate, have very light duties properly belonging to them: such as the Lord Privy Seal, the Paymaster-General, and the Chancellor of the Duchy of Lancaster. To these might be added, the Lord President of the Council and the junior Lords of the Treasury, excepting that the duties formerly assigned to the Lords of the Treasury would, if still performed, render their offices of considerable departmental importance.[x] This state of things, if objectionable in theory, is, in practice, of material advantage to the working of parliamentary government, and serves to remedy what would otherwise be a serious defect in that system.[y] As a general rule, cabinet ministers, however competent, from previous knowledge and experience, to give judicious advice on the subjects which ordinarily engage the attention of a government, have no time to spare for the deliberate investigation of new topics which unexpectedly present themselves for consideration. And when it is necessary to institute minute enquiries into matters of detail, in order to arrive at a proper determination of such questions, recourse must be had to the services of others whose time is not wholly absorbed with their own official business. Members of either House of Parliament, who are out of office, and are disposed to turn their attention to the questions of the day, have ample leisure for such investigations; but it is otherwise with cabinet ministers, who are usually so engrossed with the duties of their respective departments, that they can seldom undertake new enquiries; or even examine into the actual results, to the country at large, of measures which have been adopted by Parlia-

Necessity for some political offices with light duties.

[x] See *post*, p. 438.

[y] See Report on Official Salaries, Commons' Papers, 1850, vol. xv.; Evid. 135, 142, 170, 186, 193, 1225, 1259.

ment, perhaps, upon their own recommendation. This defect, which has become sufficiently apparent to occasion grave disquietude among the well-wishers of our present constitutional system,[z] would be altogether insurmountable if every man in the cabinet had his time as fully occupied as is the case with the principal ministers of the crown.[a] But, by including among the offices to be held by responsible ministers, some, the duties of which are so light as not to require the continued personal attendance of the incumbents of the same at their departments, the defect is considerably lessened, if not altogether removed. The persons chosen to fill offices of this description have generally been selected for their capacity to aid the government, by the assistance they can afford to the heavily worked ministers, and for the aptitude for public business they have displayed as independent members of Parliament.[b] In this way an opportunity is afforded of introducing into the government men of marked ability or influence — or who may represent large classes and great interests in the country — or different shades of political opinion among members of the same party— and yet who may be unwilling or unable to undertake the duties of a laborious department.[c] By connecting such men with a government, through the tie of a lucrative office, you are able to govern more effectively, and with the full strength of party combination, which is abso-

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[z] See observations on the subject, with suggestions for remedying this great and increasing evil, which renders official service, especially in the higher departments, more onerous every year, and demands from ministers of the crown 'severe, unremitting, and exhausting labour, such as the physical powers of few men can long sustain,' in the Edinburgh Review, vol. xcv. p. 230. 'Anybody acquainted with official life knows how attention to a large amount of details, and interruptions by persons whose business is not particularly important, exhausts the energies of the head of an office, and lessens the attention he could otherwise pay to important matters.' Secretary of State, Sir S. Northcote; Hans. Deb. vol. clxxxix. p. 817.

[a] Report on Official Salaries, 1850; Evid. 1225, 1408.

[b] *Ibid.* 1261, 1262.

[c] *Ibid.* 108, 339, 1222. Upon the formation of Lord Grey's government, in 1830, he offered to Lords Lansdowne and Holland offices of great labour and importance; but they both declined, on the plea of

lutely necessary to success under our parliamentary system.[d]

Services of ministers having light official duty.

The services of such persons are of great importance to a ministry in various ways; and their extra duties, though accidental and temporary, together give them very constant employment. They assist the deliberations of government, bringing the help of their talents or party influence in aid of consultations upon measures to be introduced; and they afterwards afford substantial support in carrying the same through Parliament.[e] They serve as unpaid members of commissions (being already in receipt of salaries from their offices) and in such investigations acquire knowledge, which is of immense advantage to them as members of the government. They are free to sit upon parliamentary committees on public questions, on which it is necessary that the government should be represented. They have leisure to undertake the conduct of government business, generally, in Parliament, and to prepare themselves for the explanations required to further the same; especially in regard to Bills of trade and finance. They are able to look into numerous questions that may arise, from time to time, whether out of parliamentary enquiries, or on behalf of the Secretaries of State, or the Chancellor of the Exchequer; giving to these ministers the benefit of their opinion, which is of great service in enabling them to form a judgment on matters, possibly, of very considerable moment.[f] They can also undertake to represent such of the adminis-

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insufficient health and strength. He then tendered to them the offices of President of the Council and Chancellor of the Duchy of Lancaster, which they accepted. Had he not been able to proffer to these eminent noblemen offices of this description, the government and the country must have lost the benefit of their abilities, and the political strength derivable from their connection with the cabinet. (*Ibid.* 1223.) Again, in 1846, the government were enabled to obtain the valuable assistance of Mr. Macaulay in the cabinet, by tendering to him the easy post of Paymaster-General; he being unwilling again to accept the laborious office of Secretary-at-War, which he had held under a former administration.—*Ibid.* 1260.

[d] *Ibid.* 341.

[e] *Ibid.* 190.

[f] *Ibid.* 135, 142, 185–191, 1468.

trative departments, in both Houses, as are not directly represented therein by their respective chiefs; a service which, in itself, is essential to the satisfactory working of parliamentary government.[g]

But, admitting the benefits arising from the existence of these offices, the question has been raised whether it is not objectionable in principle to retain offices which are virtually sinecures, in order that the incumbents thereof may have seats in the cabinet, and be free to undertake any duty that is required of them; and, it has been queried, whether it might not be better to set apart formally a certain number of seats in the cabinet, to be held by salaried ministers of the crown, but without the burden of any departmental office in connection therewith. There would, in reality, be very little difference between such a plan and the existing practice; the alternative suggested would simply compensate persons for services as members of government, without giving them direct official functions; but such a proceeding would be altogether opposed to constitutional precedent.[h] We have already seen that it is not unusual for a seat in the cabinet to be assigned to some veteran statesman, who is willing to afford the benefit of his experienced counsels, although unable to assume the cares of office; but, under such circumstances, no regular official labour, of any description, is exacted, and no salary is given. For the usage of the constitution requires that a distinct office shall be conferred in order to justify payment for services rendered.[i]

The question whether such services are performed exclusively on behalf of a particular office, or whether they are of a more general character, is wholly immaterial. It is impossible to ensure the regular and efficient discharge of any description of work without due compensation; and it is therefore imperative that if the assistance of the best men of the party in power, in carrying on

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[g] Report on Official Salaries, 1850; Evid. 136.

[h] *Ibid.* 1443, 1444.

[i] See *post*, p. 365.

the government, is to be obtained, some method must be found to secure to them a proper pecuniary equivalent for their time and labour. This is now effected by the retention of the offices above enumerated among the number of those set apart for members of the cabinet. And taking into account the mass of work, official and parliamentary, which ordinarily devolves upon cabinet ministers, it was the declared opinion of Sir Robert Peel, that the number of political offices capable of being made use of in order to secure for an administration the assistance required, did not admit of any reduction.[j] Since his time, however, the Mastership of the Mint, which was formerly a sinecure political office of this description, has been made non-political and permanent; and another office, that of Paymaster-General, the actual duties of which are exceedingly light, is now invariably held in connection with some other political appointment.[k] It is evident, therefore, that in the progress of administrative reform efforts have been made to lessen the number of offices that partake of the nature of sinecures, even to the verge of interfering with the efficient discharge of the onerous duties devolving upon the responsible servants of the crown.

Plurality of offices.

With reference to the combination of two offices in the hands of one person, it should be observed, that this is altogether a matter of ministerial arrangement, and is not unfrequently resorted to, at the discretion of the Government. It can be authorised at any time by an Order or Declaration of the Queen in Council, as it is a prerogative of the crown to create, regulate, or abolish offices.[l] It has been customary for the Vice-Presidency of the Board of Trade, to be held in conjunction with the post of Paymaster-General; for the office of Lord Privy Seal to be occasionally associated with that of Postmaster-General; for the Judge Advocate General to serve as one of the

[j] Report on Official Salaries, 1850; Evid. 324.

[k] See *post*, p. 458.

[l] See *ante*, vol. i. p. 385.

Church Estates Commissioners, and for the different Secretaries of State to relieve one another in their several departments upon any pressing necessity.[m] But such arrangements are merely provisional, and are set aside whenever their temporary purpose has been fulfilled, or the exigencies of the public service require it. When two offices are formally bestowed upon one person, it is usual to provide that the salary of the principal office only shall be paid; thus effecting a saving to the public so long as the plurality continues.

The most notable example of a plurality of ministerial offices in the hands of one individual occurred in 1834, at the time of the dissolution of the Melbourne cabinet, when the Duke of Wellington was sent for, and advised the king to entrust the task of forming an administration to Sir Robert Peel. Sir Robert Peel was then travelling on the Continent, so that to prevent delay the Duke, with characteristic promptitude, himself accepted the office of First Lord of the Treasury, together with the seals of one of his Majesty's Principal Secretaries of State, which gave him authority to act as secretary for all the departments, Home, Foreign, and Colonial. His sole colleague was Lord Lyndhurst, who accepted the office of Lord Chancellor. This proceeding, though confessedly merely provisional, and only intended to secure to Sir Robert Peel, upon his arrival, a freedom of choice in the filling up of his ministry, was severely criticised at the time. Regarded as a temporary expedient, it could not be pronounced unconstitutional, though if resorted to under other circumstances it might lead to serious abuses. A precedent in defence of the proceeding was adduced in the case of the Duke of Shrewsbury, who, at the close of Queen Anne's reign, accepted the office of Lord High Treasurer, in addition to the offices of Lord Chamberlain and Lord Lieutenant of Ireland, already in his possession. But this also took place under extraordinary circumstances, and did not continue for many days. Neither case would admit of justification except as a temporary and provisional arrangement.[n]

We have already adverted to the principle whereby all the prominent executive offices are held upon the

[m] The offices of First Lord of the Treasury and Chancellor of the Exchequer used frequently to be held by the same person; but it is doubtful whether they will ever be so held again. See *post*, p. 427.

[n] Duke of Wellington's explanations; Hans. Deb. February 24, 1835; May, Const. Hist. vol. i. p. 23.

tenure of parliamentary confidence, in the advisers of the crown, and a fair proportion of the political element is maintained in the governing body of every political department.[o] But the progress of enlightened opinion within the present century has led to the limitation of political offices to the smallest possible number, consistent with the preservation and efficiency of a responsible government, with a view to avoid the evils of the American system, the ill effects of which have been elsewhere pointed out.[p]

Political tenure of office limited to governing body.

It is doubtless most desirable in the interest of the State, and of the whole commonwealth, that differences in political opinion with the government of the day should not disqualify for the service of the crown. That while active opposition to the government, on the part of those who are employed in the public service in direct subordination to some political functionary, is regarded as a just and adequate cause for dismissal—the holders of more dignified or independent offices, such as military or naval officers, lords lieutenant of counties, sheriffs, and other distinguished public functionaries, not immediately engaged in political affairs, but who occupy an influential position in their respective localities, should be free to act as their judgment may dictate upon all questions of public policy.

Within the present century it has also become the established usage to account all offices of this description as being tenable by men who are politically opposed to the existing administration. And the dismissal of persons from such offices on account of their opposition to the government, which was no unusual occurrence in the early part of the reign of George III., would now be regarded as tyrannical and unjust.[q]

Futhermore, in the case of military or naval officers,

[o] See *ante*, vol. i. p. 377; and *post*, p. 242.

[p] See *ante*, vol. i. p. 378; *post*, p. 176.

[q] See *ante*, vol. i. p. 376; Edinb. Review, vol. cxxvi. p. 12; Hearn, Govt. of Eng. pp. 246–251.

intemperate, or even factious language made use of in their place in Parliament—unless taken up by the House itself, and made the subject of an Address to the Crown —would no longer be accounted a sufficient reason for dismissal from the service. And similar freedom of speech is also allowed at ordinary political meetings, provided that nothing be said that is treasonable, or a direct infringement of the Mutiny Act, or the Articles of War.[r]

Officers subordinate to political heads.

As regards those who are directly subordinate to any member of the administration a different principle applies. They are bound in duty to serve with the utmost fidelity and impartiality their superiors in office, whatsoever may be the political opinions they may respectively hold. These subordinate functionaries constitute the permanent element of the public service; and it is owing to the happy combination of the political and the permanent elements in the administrative system of Great Britain, and to their mutual dependence upon each other, that its successful operation is attributable. For 'in every department of State there is a permanent element, and also what may be termed a progressive and political one. The permanent public servants preserve all the traditions of the office, and carry on the ordinary business. They are the advisers of, and to a certain extent, a check upon, the new political chiefs who come in without experience; while, on the other hand, the tendency of all permanent officers is to get into a certain routine, and a change of the heads, from time to time, checked by the permanence of those who are always in office, tends very much to produce an improved system of administration of any department.'[s]

But it is undeniable, that an undue preponderance of

[r] Corresp. Will. IV. with Earl Grey, vol. i. pp. 352–359, 368. And see Edinb. Review, vol. cxxv. p. 534.

[s] Evidence of Sir Charles Wood (afterwards Lord Halifax)—a statesman who presided over more public departments than any of his contemporaries—in Report Com. on Board of Admiralty, Commons' Papers, 1861, vol. v. p. 336.

the political element would entail great evils upon the public service. Certain changes of policy are unavoidably incident to every change of ministry. As a necessary result of parliamentary government, all the departments of State are subjected to parliamentary control, and more or less exposed to the fluctuating influence of party politics. The predominant party will be in power, and will select its own instruments of government; and of course frequent changes of administration must lead to unsteady steering at the helm, to repeated changes of system, and infirmity of purpose, and to much wasteful expenditure. On the other hand, corresponding evils, of perhaps greater magnitude, would result from an undue preponderance in the permanent element. Parliamentary government is doubtless a complex and difficult system to work out. It is invaluable in the respect it shows for the liberties of the subject, but it is peculiarly exposed to abuses in matters of administration. So long as it continues in operation the government of the country must be carried on in harmony with the majority in Parliament, and to ensure this, some measure of the parliamentary element must be infused into every part of the governing body.[t] Recent administrative reforms, however, have all tended to reduce the proportion of the political element, by recognising the supreme authority and responsibility of the parliamentary chief of each department; holding him accountable for the weakness or efficiency of all his subordinates.

Political and permanent elements combined.

Having thus secured an adequate responsibility for the efficient administration of the whole public service, by means of the control which is exercised by Parliament over cabinet ministers, Parliament should carefully abstain from any direct interference with the subordinate officers of government. Such persons can only receive

Parliament not to interfere with subordinates.

[t] Report on Official Salaries, Commons' Papers, 1850, vol. xv.; Evid. 2658, &c.; Report on Board of Admiralty, Commons' Papers, 1861, vol. v. p. 159.

But to hold ministers responsible for all.

instructions as to the performance of their official functions, from a responsible minister of the crown.[u] For 'it is not the departments which govern; they, strictly speaking, are only advisers of those who govern. A department ought not to be held responsible in any way, for very often the advice of the department is not taken.' 'Those who are responsible for the conduct of the public policy must act as they think fit.'[x]

Upon this principle Mr. Lowe, the Vice-President of the Committee of Council on Education (and a member of the administration, though not of the cabinet), notwithstanding that he was the working head of the Education Department, declared that he should not have thought it necessary to resign his office—when the House of Commons, on April 12, 1864, passed a vote of censure upon the department for the alleged 'mutilation' of inspectors' reports—had it not been that he considered his personal honour and veracity to have been impugned. He thus defined his position, in reference to the vote of censure, before a committee of the House of Commons: 'The department was censured, but that would not have concerned me; that would have been the government's look out. I considered my personal honour was struck at, which caused me to resign.'[y]

To the same effect it has been declared, by the highest authority, that while the Houses of Parliament are at liberty to express their opinion as to the manner in which any department of the public service is conducted, they should never attempt to impute blame in such matters

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[u] See the case of Sir Baldwin Walker, Hans. Deb. vol. clxi. p. 1631; vol. clxii. pp. 140, 235. It is competent to any member of the legislature to call the attention of Parliament to abuses or irregularities in the conduct of business in any department of State: but the intention to submit a case of complaint to the notice of either House ought first to be communicated to the department concerned, so as to afford an opportunity for the redress of the particular grievance. If no remedy be thus obtainable, it would be proper to appeal to the House to appoint a committee of enquiry. (*Ibid.* vol. clxxiv. p. 416; vol. clxxxiv. p. 2164.) See also, objections to the interference of Parliament with the preparation or publication of annual reports, by departmental officers, *ibid.* vol. clviii. p. 2083; vol. clxx. p. 23.

[x] Evidence of the Right Hon. T. Milner-Gibson, before the Committee on Trade, Commons' Papers, 1864, vol. vii. p. 549. And see Hearn, Govt. of Eng. p. 254.

[y] Report, Com. on Education Inspectors' Reports, Commons' Papers, 1864, vol. ix. p. 81. And see *ante*, vol. i. p. 264.

to the non-political servants of the crown: excepting, of course, in cases of personal misconduct. But, under any circumstances, responsibility for the actions of subordinates should always be fixed upon their political heads. 'If ministers find that the (permanent) officers of the departments do not work well under them, then it is their duty to devise some remedy for this inconvenience; but the responsibility should not be divided, it should be imposed only on those who are able to answer for themselves in the House.'[a]

Good understanding between political and permanent officers.

It is of the first importance to the public interests that the best possible understanding should prevail between the permanent officers of the crown and their political chiefs. This can only be ensured by reciprocal confidence and respect; and nothing has contributed more to elevate the English administrative system to its present high standard of excellence than the uniform maintenance of a spirit of hearty co-operation and mutual good-will between the political and permanent servants of the crown, totally irrespective of personal opinions upon the politics of the day. Witness the testimony of Mr. Disraeli, in reference to his first appointment as Chancellor of the Exchequer, in 1852:—

'When I went to the Treasury the principal permanent civil servants of the crown were all men of even extreme Liberal opinions. They had been appointed by the previous government, and of course they were, in their opinions, hostile to our government; but I treated them with implicit confidence, and they served me with the greatest zeal and fidelity, I may say even with devotion.' 'The permanent civil officers,' he added, 'did their duty cordially and completely; and they would do their duty cordially and completely to-morrow, if there

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[a] Sir Charles Wood, Hans. Deb. vol. clxi. p. 1266; Mr. Gladstone, *ibid.* p. 2035; and see vol. clxii. p. 1392; Sir Wm. Dunbar, Comp. and Aud. Genl. in Corresp. &c., on Exch. and Audit Depts. Act, Commons' Papers, 1867, No. 97, p. 47.

were a change of government; that is my decided opinion.'[a] It is unquestionably the bounden duty of all public servants —whether they owe their appointments, in the first instance, to political preferences, or not—to show the utmost fidelity towards their official superiors, for the time being, otherwise they would be justly amenable to censure and removal from office.[b]

Excellence of the British Civil Service.

Another cordial and emphatic acknowledgment of the integrity, ability, and zeal displayed by the subordinate officers of the crown in Great Britain will be found in a paper laid before Parliament in 1868, which contains a series of letters written by the several Secretaries of State for Foreign Affairs, from 1834 to 1866, upon the occasion of their quitting office. These letters vie with one another in expressions of esteem and gratitude for the able and indefatigable assistance rendered by the clerks in the Foreign Office of every grade, to the minister in charge of that important department.[c] Similar testimony to the efficiency and honesty which characterises the permanent civil service of Great Britain has been recently borne from a very different quarter, in recommendations to the Congress of the United States by leading American ministers, in favour of the introduction of a new rule of appointments in the executive departments at Washington, requiring positions in a higher grade to be filled from the grades below, together with such provisions as would ensure the retention of competent clerks through every change of administration; — thereby exchanging the objectionable and demoralising system hitherto established in that country, for the English civil service tenure.[d]

[a] Report on Dockyard Appointments, Commons' Papers, 1852–3, vol. xxv. pp. 300, 301.

[b] See further on this subject, *ante*, vol. i. p. 388, &c.; *post*, p. 259.

[c] Statement respecting Foreign Office Agencies, 1868, p. 19.

[d] Letter of H. M'Culloch, Secretary of the Treasury, dated January 29, 1868, on re-organisation of Treasury Department, U. States, p. 3. Report of D. A. Wells, Special Commissioner of the Revenue, transmitted to Congress in January, 1868, pp. 45–48; and see *ante*, vol. i. p. 379.

Within the last ten years considerable improvements have been effected in the organisation and internal economy of the various departments of State in Great Britain. The dissatisfaction so universally felt by the nation at the conduct of the Russian war, and the widespread conviction that the disasters attending the early Crimean campaigns were mainly attributable to the inefficiency of the public departments, gave rise to a political agitation, whose rallying cry was 'Administrative reform.' A society was formed to effect this object, but it soon became apparent that, however necessary it was that some alterations should be made in the machinery of the State, this association was wholly incompetent to devise appropriate remedies. Accordingly, it failed to secure any perceptible hold either upon the sympathies of the country at large or upon the convictions of the more intelligent portion of the community. Moreover, the speeches in Parliament of the leaders of the movement indicated an absence of any clear conception of the precise objects to be sought for, as well as of the means for attaining them.[e] Fortunately, however, the statesmen then in power took warning by the misfortunes that had befallen the country from the want of an adequate control and responsibility in the governing body, and set themselves in earnest to the work of investigation and reform. They instituted a thorough and searching enquiry, by means of official sub-committees, into the actual condition of all the public departments. They sought the aid of parliamentary committees to enquire into the causes of mal-administration and to recommend suitable remedies for the consideration of government. The suggestions thus obtained were in their turn

Administrative reform.

[e] Annual Register, 1855, p. 144. See debates in House of Commons on Mr. Layard's motion of June 15, 1855, and on Sir E. Bulwer-Lytton's amendment thereto. The ministry had established the system of competitive examinations by Order in Council in the previous month; intending this measure to be the commencement of an effective reform in the public departments. Some experienced administrators, however, have doubted the policy of this system. See *ante*, vol. i. p. 385.

submitted to official scrutiny before being carried out, and the result has been the complete reorganisation of some of the leading departments of State, heretofore so grievously mismanaged, and the introduction therein of an improved system, calculated to prevent the recurrence of former evils, and to place in the hands of responsible ministers the requisite authority to carry on the government in every emergency, unfettered by official routine, and with all the strength derivable from the ready co-operation of every branch of the public service. The promptitude and efficiency displayed by the newly organised War Department, in despatching to Canada in the winter of 1861-2, and to China in the previous summer, fully equipped armies, amply supplied with the means for attack or defence, are proofs of the reality of the improvements effected, and testify to the value of administrative reform when it proceeds from within instead of from without.

Nevertheless, so far as the Board of Admiralty is concerned, it must be confessed that much remains to be accomplished before this important branch of the public service can adequately discharge the duties which devolve upon it. The existence of serious defects of organisation is generally admitted; and it may be hoped that, profiting by past experience, the efforts now being made for the reform of this great department of State will not prove unavailing.

When first considering the important questions involved in the reform of the War Office, and of the Board of Admiralty, Parliament had the benefit of the practical sagacity and great experience of that veteran administrator, Sir James Graham, whose services in the committees of enquiry into the working of these departments were invaluable, as we shall be able to point out more particularly when describing the routine in these several offices.

One prominent feature in the reforms recently effected

in the public departments of Great Britain is deserving of special mention. It is the general substitution of concentrated responsibility, in the hands of a minister of the crown, for the undefinable and irresponsible authority of boards. Formerly it was the custom, in most of the public offices, to place the supreme controlling power in the hands of a board, consisting of several members, nominally of equal rank, and who in their collective capacity met together, at stated times, to transact the business of the department. The Treasury, the Admiralty, the Board of Trade and Plantations, the Board of Control for the Government of India, the Ordnance, and the Board of Works, were all originally constituted upon this principle.[f] Gradually, however, it became the practice for the president, or other presiding officer, to transact the ordinary business of the department, convoking the assistance of his colleagues only upon rare and unusual occasions.[g] But while, in most cases, the outward semblance of a board is still preserved, enlarged experience in the practical working of government has led modern statesmen, with singular unanimity, to concur in condemning boards as instruments of executive authority, on account of their being impediments to prompt action, and destructive of personal responsibility, without offering any equivalent advantage.[h] Accordingly, with the solitary

Abolition of boards.

[f] See Bentham's Works, vol. ix. p. 218, *n*. By 6 Anne, c. 7, sec. 27, no increase in the number of commissioners for executing any existing office can be made without the consent of Parliament.

[g] Report on Official Salaries, Commons' Papers, 1850, vol. xv. Evid. 873, 874.

[h] 'A board is a very bad thing to administer, but a very good thing to check the expenditure of public money.' Rt. Hon. Mr. Lowe, Rep. Com. on Education, Commons' Papers, 1865, vol. vi. Evid. 670.—See Lord Henry Lennox's speech on a motion for a minister of the crown to be responsible for education, science, and art estimates, &c. in House of Commons, on March 18, 1862: and the comments thereupon in an article in the Edinburgh Review for January, 1866, on 'Public Galleries and Irresponsible Boards.' See also the grounds whereon the government opposed a motion in the House of Commons on February 26, 1863, to declare that where differences of opinion have arisen with respect to the interpretation of treaties between the native princes of India and the imperial authorities, the questions at issue ought to be referred for decision to the Privy Council instead of

exception of the Admiralty, all the boards above enumerated have practically ceased to exist. The Treasury Board never assembles, except for certain formal or extraordinary business, its duties being transacted by the Chancellor of the Exchequer, aided by his colleagues and assistants at the Treasury. The business of the Board of Trade is performed by the president and secretary. The Board of Ordnance has been abolished, and its powers transferred to the department in charge of the new Secretary for War. The Board of Control has also ceased to exist, upon the appointment of a Secretary of State for India. The Secretary for India is, it is true, assisted by a permanent council, or board, composed of men who have local knowledge of Indian affairs, and who are possessed of certain specially defined powers; but the secretary himself has supreme authority, and is personally responsible for everything connected with the government of India.[1] The old Board of Works has been divided into two branches, one of which, that of Woods and Forests, has been placed under the direction of two permanent commissioners, who 'consider that their work is much more satisfactorily performed since they have ceased to be a board, and have been empowered to act individually;'[j] and the remaining duties of the Board of Works are performed under the sole authority of a First Commissioner. The constitution of the Board of Admiralty alone remains unchanged. But while respect for its ancient organisation, and a fear of raising discussion upon delicate questions of jurisdiction and authority, have hitherto prevented the formal remodelling of this

being decided by the Secretary of State for India, when Secretary Sir C. Wood maintained that 'on all questions arising with other powers, independent or *quasi*-independent, the government must act on their own responsibility, subject to the control of Parliament, and they could not shift that responsibility to the Judicial Committee of Privy Council.' Hans. Deb. vol. clxix. p. 814.

[1] Sir C. Wood in Hans. Deb. vol. clxxii. p. 784. The Indian Council may indeed control the Secretary upon one or two matters specially reserved for their concurrence by the statute, otherwise his power is supreme. See *post*, p. 572.

[j] Rt. Hon. W. F. Cowper, First Commissioner of Works, Report Com. on Miscellaneous Expenditure, Commons' Papers, 1860, vol. ix. Evid. 884.

important department of State, its actual working has been so modified by usage as to bring it into greater harmony with the modern ideas of responsible administration.[k] The Board of Admiralty is now conducted in accordance with the system introduced by the Duke of Wellington for the governance of the Board of Ordnance, at the time that he filled the post of Master-General of that department. This system provided for the subdivision of labour among the various members of the board, to each of whom his special work was assigned, subject to the supreme control of the Master-General, to whom every important matter involving new principles was referred. This plan has been found to work very well at the Admiralty, as will appear more particularly in a subsequent chapter, when the political functions of the Board of Admiralty come under review. The President and Vice-President of the Committee of Council on Education are assisted by a committee of Cabinet ministers, appointed by Order in Council, to advise upon educational questions. But this committee never meets unless specially summoned by the Lord President. It never interferes in matters of administration, being merely a consultative body, which, in point of fact, represents the Cabinet, so far as the adoption of general principles of policy and the agreement to Minutes of Council on Education is concerned. But the responsibility for every thing connected with this department rests entirely and absolutely upon the Lord President.[l]

Superiority of a concentrated responsibility.

The superior advantages of governing by means of one responsible head, over the old-fashioned system of administration by boards of control, is now so generally acknowledged,[m] that of late years the internal government

[k] 'The Admiralty is not, in practice, a board. Its affairs are administered by a responsible minister, with a council of professional officers.' Lord C. Paget, Secretary to the Admiralty, in Hans. Deb. vol. clxix. p. 824. And see *post*, p. 597.

[l] Rep. Com. on Education, Commons' Papers, 1865, vol. vi. Evid. 1906, 2296.

[m] A noticeable illustration of this fact is found in the practice of the colony of Victoria, wherein, after the introduction of parliamentary government, the Board of Crown Lands and Public Works was con-

of British India has been gradually remodelled upon a similar plan. At one time the Governor-General, ruling over upwards of one hundred millions of people, exercised his vast powers in conjunction with an Executive Council, acting as one body, without any separate departmental functions. But at the suggestion of the late Lord Canning, when Governor-General, and with the concurrence of his council, that system was altered, and the Executive Council divided into departments, each member thereof being charged with a particular branch, such as Army, Finance, Public Works, or the like, while the responsibility of the council, as a whole, remained unchanged.[n] This scheme is being carried out, under the provisions of an Imperial Act passed in 1861, which empowers the Governor-General to divide the business amongst the members of his council according to his own discretion. The authority of the Governor-General, however, remains paramount and supreme, and can be in no respect limited or controlled by the action of his council.[o]

Salaries of Ministers.

Having discussed the questions of the origin and composition of the Cabinet Council, and briefly considered the various collateral points connected therewith, we have now to refer to the salaries and other emoluments appertaining to the offices held by the principal members of the administration. Formerly, the great offices of State were much more lucrative than at present. Various means existed, as by the possession of sinecures or reversions, or by fees and allowances, whereby the perquisites of office were increased. But all these have been abolished, in the gradual progress of economic reform. Up to about the year 1825 there used to be an allowance to the

verted into a department having a president and three vice-presidents, each of them political officers, charged with a separate class of duties, and assisted therein by a board of advice, composed of permanent and non-political officers. See Hearn, Govt. of Eng. p. 258.

[n] Evidence of Sir J. Graham, before Com. on Board of Admiralty, Commons' Papers, 1861, vol. v. pp. 140, 146. See also Evid. pp. 206, 358.

[o] See *post*, p. 580.

First Minister, and to each of the Secretaries of State, for a certain amount of plate, by way of outfit, on their first accepting office. This was paid for out of the Civil List; but it has since been taken away, together with all fees and gratuities of every kind.[p] Since 1830 the salaries of the Prime Minister, of the Chancellor of the Exchequer, and of the Principal Secretaries of State have been severally fixed at 5,000*l.* per annum: that of the First Lord of the Admiralty at 4,500*l.*, and those of the other heads of administrative departments generally at 2,000*l.* per annum. This reduction was effected at the instigation of ministers themselves. Immediately upon the Grey ministry acceding to office, they placed the amount of their respective salaries under the consideration of a committee of the House of Commons, and accepted the recommendations for reduction which were made by that committee.[q] These salaries come under the revision of Parliament every year, as they are included in the estimates, and voted in supply. In 1850 the official salaries again underwent examination by a committee of the House of Commons, but the committee were of opinion that, with scarcely an exception, the salaries of the chief administrative offices 'were settled in 1831 at the lowest amount which is consistent with the requirements of the public service.'[r]

Most of the leading statesmen of the day were examined before the committee in 1850, and they concurred in the foregoing opinion, alleging, with regard to the offices for which a salary of but 2,000*l.* a year is given, that they do not compensate the parties holding them, and offer no pecuniary inducement to public men for their acceptance.[s] Without advocating the increase of existing salaries, it was urged on behalf of their present rate, that it is of the

[p] Report on Official Salaries, Commons' Papers, 1850, vol. xv. Evid. 271, 272.

[q] Mirror of Parl. 1833, p. 617.

[r] Rep. on Offic. Salaries, 1850, p. v. May, Const. Hist. vol. ii. p. 589. And see an article on the Pay of Ministers of the Crown, in Journal of Statistical Society, vol. xx. p. 102.

[s] Rep. on Off. Sal. 1850, Evid. 91.

Necessity for adequate salaries to Ministers.

greatest public advantage that men of ability, of small private means, should be enabled to enter into public employ instead of the professions, without being placed in an unfair position towards such of their colleagues as might possess private fortunes. Some of the most eminent statesmen of the past century were notoriously men of very small private incomes, as for example the two Pitts, Fox, Burke, Canning, and Huskisson.[t]

In his evidence before the committee, Sir Robert Peel quoted, with marked approbation, the following opinions of Edmund Burke upon the question at issue:—'What is just payment for one kind of labour, and full encouragement for one kind of talents, is fraud and discouragement to others: many of the great officers have much to do, and much expense of representation to maintain; a Secretary of State, for instance, must not appear sordid in the eyes of the ministers of other nations; neither ought our ministers abroad to appear contemptible in the courts where they reside. In all offices of duty there is, almost necessarily, a great neglect of all domestic affairs: a person in high office can rarely take a view of his family house. If he sees that the State takes no detriment, the State must see that his affairs should take as little. I will even go so far as to affirm, that if men were willing to serve in such situations without salary, they ought not to be permitted to do it. Ordinary service must be secured by the motives to ordinary integrity; I do not hesitate to say, that that State which lays its foundation in rare and heroic virtues, will be sure to have its superstructure in the basest profligacy and corruption. An honourable and fair profit is the best security against avarice and rapacity, as in all things else a lawful and regulated enjoyment is the best security against debauchery and excess.'[u]

Sir Robert Peel and Lord John Russell both concurred in enforcing these enlightened opinions upon the com-

[t] Rep. on Off. Sal. 1850, Evid. 260, 261.

[u] *Ibid.* 328.

mittee, with many apt arguments and illustrations, drawn from their own experience in public life and their extensive acquaintance with political history. Some of their statements were to the following effect:—It has frequently happened that the possession of office, by engrossing the attention of the incumbent, to the exclusion of personal concerns, has occasioned the neglect and injury of the private affairs of men who were not themselves prone to extravagance. In considering the proper salary of a member of the administration, it is also necessary to take into account the precariousness of the tenure of office. Mr. Fox, after forty years' service in Parliament, only held office for about eighteen months, including the two administrations of which he formed a part. And yet upon accepting office, it is incumbent upon those who do not already possess suitable establishments, to provide the same without regard to the uncertain duration of official life. Admitting that men are generally influenced by motives of honourable ambition in entering on a public career, and are principally actuated by a desire to do the State good service, without regard to pecuniary considerations, it is the more obligatory upon the State to allot to them such a provision as will suffice to sustain the unavoidable expenses of office, and leave no temptation or excuse to abuse its opportunities; otherwise the choice of public servants would become too much restricted, and it would be impossible for men destitute of private means to accept office without serious risk of pecuniary embarrassment.[v]

An important item in the expenses of a minister of State is that which is entailed upon him by the necessity for exercising hospitality. No inconsiderable advantage, in a public point of view, arises from the opportunity afforded for friendly intercourse between ministers and members of Parliament at official dinner-parties. It was stated in evidence before this committee, that the

[v] Rep. on Off. Sal. 1850, Evid. 345, 346, 1227, 1231.

opportunity of meeting in private to a much greater extent than is now very practicable among public men would be of very great service to all parties, and would materially facilitate public business.[w] And Lord Palmerston testified that when he filled the office of Foreign Secretary, and entertained foreign ministers in his own house, he had constant conversations with them on political topics.[x] It is therefore essential that the official income of a member of the government should be, at all events, sufficient to admit of the frequent exercise of hospitality.

Official residences.

In addition to their salaries, certain of the ministers are entitled to an official residence. This privilege was formerly granted to a number of persons in the public service upon insufficient and unwarrantable grounds.[y] But since an enquiry into the matter by the House of Commons in 1834,[z] it has been limited, so far as the administration is concerned, to the First Lord of the Treasury, the Chancellor of the Exchequer, the First Lord of the Admiralty, the Secretary, and two or three of the Junior Lords of the Admiralty.[a] The Foreign Secretary is also allowed a house if he chooses to take it, but none have done so since Mr. Canning.[b] In fact the establishment at the old Foreign Office was so large that every vacant space in the building was occupied.[c] In the new Foreign Office, recently erected, no provision has been made for a residence for the Foreign Secretary, but the building contains reception-rooms, which may be used by that functionary or by other ministers.[d] The reason alleged

[w] Rep. on Off. Salaries, 1850, Evid. 94. But during the sitting of Parliament, a cabinet minister is never expected to dispense much hospitality, or to visit much, except on the two days of the week (Wednesday and Saturday) when the Houses of Parliament do not sit in the evening. This principally applies, however, to the ministers who have seats in the House of Commons, for the House of Lords rarely has evening sittings. At the same time there are some invitations, such as those given by foreign ministers, which members of the government do not feel at liberty to decline. *Ibid.* 1240, 1243.

[x] *Ibid.* 678.

[y] Commons' Papers, 1831-2, vol. xxvi. p. 551.

[z] *Ibid.* 1834, vol. xi. pp. 449, 453.

[a] Rep. on Off. Salaries, 1850, Evid. 87.

[b] *Ibid.* 76, 248.

[c] *Ibid.* 2889.

[d] Hans. Deb. vol. clxxi. p. 374.

why no residences have been provided for the Home Secretary and other responsible chiefs of important administrative departments, is not one of principle, but that convenient houses could not be found for more than a certain number of ministers.[e]

It has been questioned whether an official residence is of much pecuniary benefit to its possessor. Doubtless, on other grounds, it is of the greatest possible service to the head of a heavily worked department to have a residence at his place of business. It affords facilities for transacting official work at times when it could not otherwise be done at all, which is of great public advantage. But there are heavy expenses attending an official residence. Nothing is provided but the walls and fixtures. Fuel and lights are not allowed, except in the rooms used for official business.[f] The furniture is purchased by the incoming minister of his predecessor, whether he intends to occupy the house or not, and is in turn disposed of by him to his successor, although this, to a certain extent, is optional. Only repairs to the solid part of the building are done at the cost of the public; everything else by the tenant. Ministers are charged with income tax and all other imposts; they also defray part of the taxes on the official residences, in respect of their beneficial occupation of a portion of the building.[g] All these matters being taken into account, it is not surprising that neither Lord Melbourne nor Lord John Russell availed themselves of their official residences during their tenure of office as Prime Minister.[h]

Usage in France.

In France (at least since the reign of Louis Philippe) a more liberal policy has prevailed in regard to the chief ministers of State. In addition to their salary, they are provided, on accepting office, with a house completely furnished, and supplied with everything, including plate,

[e] Rep. on Off. Salaries, 1850, Evid. 75.

[f] *Ibid.* 23, 69, 71. The First Lord of the Admiralty has a suite of reception rooms, which are furnished by the public; but this is an exceptional case. *Ibid.* 1228.

[g] *Ibid.* 71, 77–80, 269.

[h] *Ibid.* 69.

linen, furniture, attendance, fuel, and lights. The expenses of the table are the only items not defrayed by the public. All repairs, &c., are executed at the public expense. When a change of ministry occurs, the new incumbents immediately take possession of these advantages, just as they have been enjoyed by their predecessors.[1]

Pensions to Ministers.

On retiring from office, provision is made by the Act 4 & 5 Will. IV. c. 24, for the grant of pensions to members of the Administration, varying in amount from 1,000*l.* to 2,000*l.* per annum, according to the importance of the particular office. But to entitle an individual to receive one of these pensions it is necessary that he should have been in the public service for a certain number of years, and that he should declare that his private income is inadequate to maintain his station in life. Moreover, a limited number only of these pensions may exist at any one time. The term of service to entitle to a pension need not be continuous, but may be made up at different periods during the public career of the applicant.[1]

III. The actual functions of the Cabinet Council: with its relations to the Crown and to the Executive Government.

Meetings of Cabinet.

A meeting of the Cabinet Council is ordinarily held once a week for the purpose of deliberating upon State affairs; but when occasion requires, they assemble much oftener. It forms 'no part of the duty of Government to hold meetings of the Cabinet at any stated times, but only according to the necessities of the public service. Any minister may summon a Cabinet whenever he pleases and for any object, either connected with his own department or for anything else. But instead of sending at once, and ordering a messenger to assemble the Cabinet, it has been usual to apply to the First Minister, who then

[1] Rep. on Off. Sal. 1850, Evid. 412–416. Lambert, Organisation Administrative, p. 64.

[1] Rep. on Off. Sal. 1850, Evid. 104, 105. Murray's Handbook, p. 229.

naturally orders the summons to be issued. During a session of Parliament, it is customary for the Cabinet to be summoned every Saturday, to discuss the progress of legislation and the current business of the week; but should the public service require, it is also assembled on other days.'[k] Upon the prorogation of Parliament, it has been usual to intermit the meetings of the Cabinet until some time in October, so as to enable ministers to absent themselves from town, to recruit their strength after the labours of the session.[l]

During the Crimean war, in 1854, the Cabinet ministers separated, as usual, at the close of the parliamentary session, about the middle of August, and did not reassemble in council until the middle of October. This circumstance was noticed by the Sebastopol Committee 'with regret,' although both the Premier (Lord Aberdeen) and the Secretary-at-War assured the committee that nothing had occurred meanwhile of a nature to require a meeting of the Cabinet, or it would have been summoned immediately.[m] The late Sir George Lewis, a most excellent authority on such a subject, has pithily remarked:—'People who know how things are managed, know that the oftener cabinets meet the better. Ignorant persons fancy that when cabinets meet often there is something wrong; but that is a mistake. It is in the long vacation and in the country that some ministers do something brilliant and extraordinary that is much objected to. When ministers get together, they can agree on something plain and satisfactory.'[n]

Meetings of the Cabinet are usually held at the Foreign Office; but this is merely for convenience: they may be assembled at the private residence of the Premier,[o] or at any other place where they can be got together.

It is not necessary that any definite number of members

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[k] Lord Aberdeen, in Report of Sebastopol Committee, Commons' Papers, 1854–5, vol. ix. pt. 3. p. 294. And see pt. 2. p. 210.

[l] *Ibid.* pt. 2. p. 209.

[m] *Ibid.* pt. 3. pp. 194, 295, 360.

[n] National Review, October 1853, p. 497.

[o] Peel's Memoirs, vol. ii. p. 140. From the time of Harley, Walpole, and Grenville, to our own day, it has been customary for the Prime Minister occasionally to meet his colleagues at a Cabinet dinner-party, when affairs of State are discussed, and peradventure resolutions agreed upon which are afterwards communicated to the king. See *ante*, p. 115. Corresp. Will. IV. with Earl Grey, vol. i. p. 74; vol. ii. p. 226.

Relations of Prime Minister to the Cabinet.

should be present to constitute a formal meeting of the Cabinet Council, as there is no fixed quorum.[p] The unavoidable absence of the Prime Minister himself is no hindrance, provided he is willing to allow the Cabinet to confer together without him.[q]

Ordinarily the Prime Minister would direct a summons to attend meetings of the Cabinet to be sent to every individual having a seat therein; but this rule is not inflexible. It is notorious to all persons who are familiar with our constitutional history, that it has frequently happened that men have been retained in office, with nominally a seat in the Cabinet, on account of special administrative or departmental ability, who nevertheless have ceased to carry political weight, or to be regularly consulted by their colleagues on questions affecting the general government of the country. Besides the instances to this effect, anterior to the reign of George III., which have been already noted in this chapter,[r] we may refer to the case of Lord Chancellor Eldon, who after the accession of George IV. was very little consulted by his brother councillors in political matters, and was left almost exclusively to the discharge of his official duties. It has even been alleged that Mr. Huskisson was for the first time introduced into the Cabinet by the Premier, Lord Liverpool, not only without previous consultation with Lord Eldon, but without his knowledge; and that the Chancellor was first informed of the fact by seeing it mentioned in a newspaper.[s]

Moreover, it is not unusual, in the working of a Cabinet, which must include some individuals whose time is fully engrossed with administrative duties, that 'matters are matured and considered in the first instance by a small number of members, and that many, especially of those

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[p] Commons' Papers, 1854–5, vol. ix. pt. 2, p. 209.

[q] Corresp. Will. IV. with Earl Grey, vol. i. p. 352. Hans. Deb. vol. clxxxvi. pp. 1590-1598.

[r] See *ante*, p. 116, also p. 32.

[s] Campbell's Chancellors, vol. vii. pp. 381, 383.

who hold offices with heavy departmental work,—such, for example, as that of the Secretary of State for India,—are not in the first instance consulted as to measures which are about to be proposed to the Cabinet.' When the particular question has been suitably matured, a full Cabinet Council is convened to decide upon it.[t]

In any case of emergency, requiring immediate action, the Prime Minister would not scruple to assume the responsibility of exercising the supreme authority which belongs to his office, availing himself merely of such advice or assistance as might be within reach.

An instance of this kind occurred in 1845, during the premiership of Sir Robert Peel, the particulars of which are narrated in his posthumous 'Memoirs.' The sudden failure of the Irish potato crop, and the threatened scarcity of food which became alarmingly apparent from information that reached him after the separation of the Cabinet on November 6 in that year, induced the Premier (acting in concert with two of his colleagues) to take the unusual step of authorising the purchase of one hundred thousand pounds worth of Indian corn in the United States, on account of the Government. It was necessary to keep this transaction secret for obvious reasons. It was conducted with great discretion by the house of Baring, acting on behalf of the Treasury, which department undertook the whole pecuniary risk. The corn was intrusted to Irish commissariat officers, in the spring of 1846, to sell from various depôts at a moderate price, wherever a deficiency of food existed. This prompt and energetic measure afforded a most timely relief, though it failed to avert altogether the horrors of famine in that terrible crisis.[u]

The topics to be discussed in council on any particular occasion are seldom known beforehand. Ministers are

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[t] Lord Cranbourne, Secretary for India. Hans. Deb. vol. clxxxv. p. 1348. Earl Russell, *ibid.* p. 1638.

[u] Peel's Memoirs, vol. ii. p. 173. Knight's Hist. of Eng. vol. viii. p. 548.

generally aware of the questions under the consideration of government, but it is not customary to announce the subject for which a meeting of the Cabinet is convened.

Questions before the Cabinet.

The deliberations of the Cabinet are usually confined to matters of general policy, whether domestic or foreign, including such measures as it may be deemed advisable to submit to the consideration of Parliament for the welfare and social advancement of the nation. But there are also other subjects that from time to time are brought before this responsible body. For example, questions will continually arise which, though not ripe for immediate settlement, nevertheless require careful preliminary investigation. The details of such questions are first examined, either by individual ministers or by a committee of the Cabinet, and when sufficiently prepared for discussion, are then submitted for the consideration of the whole Cabinet.[v]

It has been a frequent practice of late years, when any subject of importance has arisen, upon which the head of a great department of State (being a Cabinet minister) has been desirous of consulting his colleagues in the government, for a committee of the Cabinet to be convened to go into the details of the question, previously to submitting it to the Cabinet collectively. The mode of effecting this is, for the minister who desires the advice of his colleagues to request the Prime Minister to appoint a committee to assist him in preparing the statement which should afterwards be made to the Cabinet. Every year it is customary for such committees to be appointed on behalf of the War Office, the Admiralty, the Treasury, and other departments of State.[w]

All questions of administration that involve either new or important principles,—or which are likely to excite discussion in Parliament,—are brought up for the judg-

[v] Report, Com. on Official Salaries, Commons' Papers, 1850, vol. xv. Evid. 1397, 1409.

[w] Rep. Com. on Education, Commons' Papers, 1865, vol. vi. Evid. 1887–1894.

ment of the whole Cabinet. For while, in the government of the country, each minister is virtually supreme in his own department up to a certain point (subject, however, to the constitutional control which is exercised by the Treasury, in all cases where the expenditure of public money is concerned), beyond that he must either consult the Prime Minister, or bring the matter before his colleagues in council.[ww] For example; it is the usage for the Cabinet to consider of the number of men required for the military and naval service of the year. Their decision is reported to the queen, and then formally declared by the Queen in Council. It is afterwards communicated by one of the Secretaries of State to the Commander-in-chief and to the Board of Admiralty. It then becomes the duty of the Secretary of State for War and of the First Lord of the Admiralty to prepare estimates, to be submitted to Parliament, for the necessary supplies to carry out the intentions of the Government. The manner in which the naval power shall be distributed is also a Cabinet question.[x] And whenever circumstances render it necessary to send troops abroad, the consideration of the measure devolves, in the first instance, upon the Cabinet. The number of battalions to be employed in the different colonies is also a matter of general policy, which is determined upon by the Cabinet. And appointments of officers to chief commands, whether naval or military, are generally made with the concurrence of the Cabinet.[y]

Any matters of difference between subordinate members of the ministry, in regard to their official duties—if not reconcilable by the authority of the Premier[z]—and any

[ww] Rowlands, Eng. Const. 436, Rep. Com. on Board of Admiralty, Commons' Papers, 1861, vol. v. p. 182.

[x] See *post*, p. 595.

[y] Commons' Papers, 1861, vol. v. p. 49. Report on Military Organisation, Commons' Papers, 1860, vol. vii. pp. 95, 636. Sir G. C. Lewis, in Hans. Deb. vol. clxix. p. 1281; *ibid.* vol. cxc. p. 368.

[z] See cases in Rep. Com. on Board of Admiralty, Commons' Papers, 1861, vol. v. p. 199. Rep. of Sebastopol Committee, *ibid.* 1854-5, vol. ix. pt. 3, pp. 293, 360.

questions at issue between different departments of state, ought to be submitted to the decision of the Cabinet.

Kertch and Yenikale prize money.

Thus, on June 27, 1862, on a motion in the House of Lords for the production of certain papers, attention was called to the fact that some prize money, which had been earned by the army and navy at the capture of Kertch and Yenikale, in 1854, had not been paid, in consequence of differences on the subject between the Treasury and the Board of Admiralty. The Admiralty had strenuously advocated the payment, but the Treasury had interposed objections and difficulties, whereby the captors had been deprived of their unquestioned rights. The Cabinet, it seems, had never been appealed to in the matter. Lord Derby censured the Government for not deciding upon the case; saying that 'it was one with which the Government ought to deal in its executive capacity; and that when differences arose between two members of the Government, a Cabinet was of no use at all except as a final court of appeal.'[a] On July 8 the subject was brought before the House of Commons, on a motion 'that it is inexpedient, in the opinion of this House, that judgment should be any longer delayed on the amount of prize money due to her majesty's land and sea forces employed in the capture of Kertch and Yenikale, on May 24, 1854, as it is calculated to injure the confidence of the soldiers, seamen, and marines in the good faith of her majesty's Government in the matters of prize.' After a short debate, Lord Palmerston (the Premier) consented to this motion, with the understanding 'that the question should be referred to a competent court of law;' and it was accordingly agreed to.[b] But upon mature consideration, and after further communication with the law officers of the crown, the Government came to the conclusion that the claim was irresistible, so without appealing to a court of law they submitted a vote to the House of Commons in committee of supply for the sum of 85,925*l.*, to compensate the troops and seamen for the value of the stores they had captured on the occasion in question. This vote was at once agreed to by the House.[c]

And here it may be remarked, incidentally, that the public disclosure of differences of opinion between two or more departments of Government, though sometimes, perhaps, unavoidable, has always a

[a] Hans. Deb. vol. clxvii. p. 1131. To the same effect Earl Grey afterwards said, 'there ought to be free discussion between the departments, and there must often be a difference of opinion between them. But there is a mode of settling these differences. If the matter is one of importance, the Secretary of State may refer it to the First Lord of the Treasury; and if his decision is not satisfactory, he may refer the matter to the Cabinet.' *Ibid.* vol. clxviii. p. 276.

[b] *Ibid.* vol. clxviii. p. 89.

[c] *Ibid.* vol. clxx. p. 613.

mischievous effect upon the public service. It is obvious that discussion between different departments, upon points of policy or practice, must frequently take place, and ought to be regarded as private and confidential. Once a decision has been arrived at, the whole administration are responsible for it; but meanwhile the disclosure of any actual disagreement is unseemly, and is calculated to produce most injurious results.[d]

Its deliberations secret.

The deliberations of the Cabinet upon all matters which engage their attention are strictly private and confidential; being kept secret even from the other members of the administration, who have no seat in the Cabinet, and who therefore are not directly responsible for the conduct of the Government. Upon their first introduction into the Privy Council, ministers are invariably sworn to secrecy.[e] Hence they are not at liberty, thenceforth, to divulge proceedings in council—or to reveal to others any confidential communications they may have had; either with the sovereign or with a colleague in office—without express permission from the crown.[f] This applies equally to those who have ceased to form part of an administration, as to members of an existing government.[g]

No secretary or clerk is permitted to be present at meetings of the Cabinet Council; neither is any official

[d] Hans. Deb. vol. clxxxv. p. 463. And see the discussion in the House of Lords on the 14th July, 1862, respecting the differences between the Treasury and the Colonial Office in regard to the Jamaica debt, *ibid.* vol. clxviii. p. 260. And on this subject see Commons' Papers, 1862, vol. xxxvi. p. 817. See also Mr. Disraeli's remarks upon the effect of the cases of misunderstanding between public departments, which were brought to light in the session of 1862. Hans. Deb. vol. clxviii. p. 1138. And see *ibid.* vol. clxix. p. 1393. And as respects differences between the Treasury and the Board of Admiralty, *ante*, vol. i. p. 561. And between the Board of Audit and the Board of Works, *ante*, vol. i. p. 572. And between the War Office and the Indian Government, see Hans. Deb. vol. cxc. p. 175.

[e] See *ante*, p. 55.

[f] Mirror of Parl. 1831–2, p. 2069. See the observations in both Houses of Parliament upon a letter from the Lord-Lieutenant of Ireland (the Marquess of Anglesey) to the prime minister (Earl Grey), pointing out, for the information of the Cabinet, the views entertained by his lordship in regard to the situation of Ireland; which letter was read in the House of Commons by Mr. Hume and other members. The unauthorised publication of this letter was stigmatised as 'a most foul and scandalous breach of confidence.' *Ibid.* 1834, pp. 1373, 1375, 1430, 1446.

[g] *Ibid.* 1834, p. 2645.

record kept of its proceedings. The decisions of the Cabinet are either embodied in formal minutes, to be submitted to the sovereign, or else are carried into effect by the personal directions of the individual ministers, to whose departments they may particularly apply.[h]

Decisions of the Cabinet,

Mere decisions of the Cabinet, unless followed up by some formal order or declaration of the Queen in Council, or other authoritative official act, are necessarily of an ephemeral character; having a present efficacy so far as concerns the matter in hand, but carrying with them no permanent authority. 'It is an important feature in the executive government of this country, that there is no department which is supreme over all the other departments. It is quite true that the First Lord of the Treasury is the head of the Cabinet, and the Cabinet can give any order, which it would be the duty of the departments to obey; but it is not at all true that that order would become part of our executive or administrative system. On the contrary, it dies with the Cabinet that gave it birth; and it would be for the government which followed it to revive it or not as they might think fit.'[i]

how carried out.

If any authoritative action on the part of the crown should be required, in order to give effect to a decision of the Cabinet, it would be the duty of the Prime Minister to advise a meeting of the Privy Council to be summoned, from whence orders in council, proclamations, or other official notifications might proceed. All commands of the sovereign, whether emanating from the Privy Council, or issued upon the advice of a responsible minister, should be transmitted to the officer or department of state charged with giving effect to the same by a Secretary of State.[j]

Apart from the adoption of any formal minutes, the extent to which documentary evidence may exist in

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[h] Murray's Handbook, p. 101. Dod, Parl. Companion, 1868, p. 84.

[i] Mr. Gladstone, Hans. Deb. vol. clxvi. p. 1847.

[j] Hans. Deb. vol. cxl. p. 1047. And see *post*, p. 493.

regard to matters which have at any time undergone discussion at Cabinet meetings, depends in a great measure upon accidental circumstances. When there is an opportunity for frequent personal intercourse amongst those who take a prominent part in Cabinet Councils, it may happen that little or nothing is committed to writing at the time.[k] But it was the usual practice with Sir Robert Peel to bring before his colleagues his particular views in regard to great public questions, upon which he desired to have a decision of the Cabinet, by means of written memorandums. These papers were generally 'read by himself at a meeting of the Cabinet, and afterwards sent in circulation amongst the members of the Government. The best opportunity was thus afforded for a mature consideration of statements made, and of arguments adduced, in support of measures proposed for consideration, and the most effectual precaution taken against misconstruction, and hasty, inconsiderate decision.'[l] This practice has been generally followed, not only by Prime Ministers, but by subordinate members of the Cabinet, who have been desirous of calling the attention of their colleagues to important matters that have required careful statement or explanation. Such papers are circulated amongst ministers by means of 'Cabinet despatch boxes,' to which every Cabinet minister possesses a master-key.[m]

Ministerial memorandums.

It sometimes happens that a member of the administration, being a Privy Councillor, but without a seat in the Cabinet, is called upon to attend a meeting of the Cabinet, in order that he may express his views upon some question which intimately concerns his own department. Thus, Lord Castlereagh, when Chief Secretary to

Other Ministers invited to attend a meeting of Cabinet.

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[k] Peel, Memoirs, vol. ii. p. 97.

[l] *Ibid.* p. 99.

[m] *Ibid.* pp. 184, 194. Donne, Corresp. Geo. III., vol. ii. p. 134. Haydn, Book of Dignities, 88 *n.*— Occasionally documents which are intended to be perused by Cabinet ministers only, are confidentially printed at the Foreign Office, to avoid the necessity for multiplying manuscript copies for that purpose. Hans. Deb. vol. clxvi. p. 711.

the Lord-Lieutenant of Ireland, was invited to confer with ministers upon Irish questions, in September 1800, and again early in the following year.[n] If the occasion be one of peculiar gravity and importance, a summons should be issued by the proper officer directing certain persons to attend a committee of the Privy Council, for certain specified purposes; which committee should consist of the Cabinet ministers and the other privy councillors whose attendance is required. The report of this committee should be made to the sovereign in Council. But when a mere informal interview is sought by Cabinet Ministers with a colleague in office, he would simply be invited to be present at a sitting of the Cabinet.[o] Unless some arrangement of this kind be adopted, a department presided over by a minister who is not of the Cabinet is unable to take the opinion of the Cabinet upon any matter, except by means of a written memorandum, to be presented to his colleagues in council by the Home Secretary; a proceeding which does not always obtain for the question a full and satisfactory consideration.[p]

The Prime Minister in the Cabinet.

The position of the Prime Minister towards the Cabinet is peculiar. Although he is the head of the administration, and necessarily its most important and influential member, yet he meets all his colleagues in council upon a footing of perfect equality. At meetings of the Cabinet, the only one who has precedence over his fellows is in fact the president of the council. But inasmuch as the entire responsibility for the Government devolves on the First Minister of the Crown, he naturally must possess a degree of weight and authority in council which is not shared by any other member. Ordinary questions may be put to the vote, and decided by a majority adverse to the opinion of the Prime Minister.[q] But if he chooses,

[n] Edinb. Review, vol. ciii. p. 350. See also Report, Com. on Education, Commons' Papers, 1865, vol. vi. Evid. 2395.

[o] Corresp. Will. IV. with Earl Grey, vol. i. p. 399.

[p] Rep. Com. on Education, 1865. Evid. 667, 668.

[q] Corresp. Will. IV. with Earl Grey, vol. i. pp. 431, 433.

he may insist upon the Cabinet deciding in any matter in accordance with his own particular views; otherwise he has the power, by his own resignation of office, to dissolve the ministry.[r] 'In case of irreconcilable differences with his colleagues, he may require their resignation or a dissolution of the Cabinet.'[s]

The elder Pitt, who had been all-powerful as Prime Minister during the reign of George II., was obliged when George III. ascended the throne to submit his measures to the Cabinet. Being out-voted therein, on the question of war with Spain, he resigned office, declaring that 'he would not remain in a situation which made him responsible for measures he was no longer allowed to guide.'[t]

In 1797, during the premiership of the younger Pitt, he submitted to the Cabinet the expediency of renewing an attempt to bring about a peace with France. The Cabinet were divided upon the question. Lord Grenville and Mr. Windham were decidedly averse to any overtures of the kind. But Pitt was resolved, and it became Grenville's duty, as Secretary of State, to make the proposal to the French minister.[u]

But it is not usual for the Prime Minister to proceed to extremity with the Cabinet, until he is convinced that there is no other alternative between enforcing the adoption of his own views and his retirement from office. For 'a compromise is the natural result of all differences between men in official stations under a constitutional Government; it is so even where they are not coequal in authority.'[v]

At the time of the failure of the Irish potato crop, in the autumn of 1845, Sir Robert Peel, who was then Prime Minister, advocated in the Cabinet the opening of the ports for the admission of foreign corn, and the temporary repeal of the duties on the importation of corn; but having the support of three only of his colleagues, he was overruled, and did not insist upon it. Several weeks later, the necessity becoming more urgent, Sir Robert Peel

[r] Report on Board of Admiralty, Commons' Papers, 1861, vol. v. p. 182. And see Rep. on Mil. Organisation, *ibid.* 1860, vol. vii. p. 511.

[s] Cox, Eng. Govt., 652.

[t] Campbell's Chief Justices, vol. ii. p. 457.

[u] Massey, George III., vol. iv. p. 248.

[v] Rep. on Military Organisation, Commons' Papers, 1860, vol. vii. p. 557.

again advised the adoption of this policy; but could not induce his colleagues to agree with him. Whereupon he resigned office; and as it was impossible to form an administration from amongst his late colleagues, Lord John Russell was sent for by the queen. His endeavours to form a ministry also failed. Her majesty then requested Sir Robert Peel to withdraw his resignation, which he agreed to do, and reconstructed his Cabinet by selecting for his colleagues men who were willing to co-operate with him in carrying out his policy; claiming for himself, as 'the Minister of England,' the 'unfettered power' of judging of those measures which he believed the public interests to require.[w]

The Prime Minister and the Cabinet.

On April 23, 1863, the sum of 50,000*l.* was voted in committee of supply towards the expense of a national memorial, or monument, to the memory of the late Prince Consort. It was understood that this would be the extent of the pecuniary assistance to be granted by Parliament towards this undertaking.[x] But at the same time the Premier (Lord Palmerston) promised the committee of construction that the Government would give them sufficient old gun-metal for the bronze work of the intended structure. Not being immediately wanted, there was no application made to the Treasury or War department for this gun-metal until 1865, when the memorial having reached the stage at which the metal was required it was applied for. Lord Palmerston then consulted the Cabinet upon the matter, when some of his colleagues (including the Chancellor of the Exchequer) expressed their disapproval of the course taken in regard to it. But there appears to have been no formal decision of the Cabinet on the question. Lord Palmerston, however, took the responsibility of writing to the parties interested, informing them of the objections made by some of his colleagues, but nevertheless repeating his original promise, and adding that if necessary he should be prepared to submit a vote to the House for the metal. At this juncture Lord Palmerston died, and his ministry was broken up. A year afterwards, the Derby ministry, being appealed to on the subject, resolved to give effect to Lord Palmerston's engagement, upon the faith of which the memorial committee had continued to act. But pursuant to a rule which had been adopted by the Treasury, at the desire of the House of Commons, it was determined to submit a resolution in committee of supply for the grant of the sum of 4,970*l.*, being the value of the gun-metal, to enable the Treasury to purchase it from the War department and present it to the promoters of the memorial. In debating this resolution, the ex-Chancellor of the Exchequer (Mr. Gladstone) demurred to the statement that the Palmerston Government had in any way consented to this proceeding, whatever might have been

[w] Hans. Deb vol. lxxxiii. pp. 86–95.

[x] *Ibid.* vol. clxx. p. 605.

said or done by Lord Palmerston himself in the matter. But Mr. Disraeli, as Chancellor of the Exchequer, contended that the House would 'not be acting fairly or in a liberal spirit if they took advantage of a petty objection to throw obstacles in the way of carrying out the engagement' made by Lord Palmerston in writing on this subject. Whereupon the vote was agreed to, without further remark.[y]

Communications between the Crown and Cabinet.

We have next to consider of personal communications between the sovereign and the members of his Cabinet Council. And in view of the constitutional relationship which subsists between the king and his ministers it will be appropriate to notice, in this connection, the position of political neutrality which is occupied by the sovereign in his intercourse with all other persons; including those who have the privilege of access to the royal presence, and who may desire to avail themselves of such an opportunity to express to him their own convictions upon questions of public concern.[z]

The official channel of intercourse between the sovereign and the Cabinet Council was formerly a secretary of state, but is now invariably the Prime Minister.[a] It devolves upon this functionary to convey to the sovereign for his approbation all the important conclusions of the Cabinet; and to him the sovereign makes known his decisions thereon.[b] Communications on affairs of state are constantly passing between the sovereign and the Prime Minister. Sometimes the sovereign will address 'the Cabinet' collectively;[c] but usually his official correspondence is conducted exclusively with the Prime Minister, by whom the royal letters are read to, or circulated amongst, his colleagues in the Cabinet. Being confidential papers, they must necessarily be withheld from all other persons; unless by express leave of the king. For,

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[y] Hans. Deb. vol. clxxxiv. pp. 1551, 1579, 1605.

[z] For the proceeding necessary on the part of a peer, holding no official rank, to obtain audience with the sovereign, see *ante*, vol. i. p. 170.

[a] See *ante*, pp. 39, 118.

[b] See Edinb. Review, vol. cxxv. p. 546.

[c] Jesse, Life of Geo. III., vol. iii. pp. 448, 450, 536.

as has been already noticed, the king's counsels must be kept secret by all who take part therein.[d]

Political neutrality of the sovereign.

William IV., whose bearing as a constitutional monarch won for him universal confidence and respect,[e] affords us an admirable example of the nature of the intercourse that ought to subsist between the sovereign and those who are permitted to have an audience with him. We learn, upon undeniable authority, that his majesty was always accessible to everyone who desired an interview, that he was in the habit of seeing many persons daily, with whom he would converse freely upon any topic upon which they had information to impart; but that, 'although he may listen to them, he never converses upon any matter which may be the subject of communication with his government, or respecting ministerial or official arrangements in contemplation. Politics are never the subject of conversation, . . . even common articles of intelligence are not noticed otherwise than as conveyed in the newspapers.'[f]

May mediate between contending parties;

The only deviation on the part of William IV. from the strict rule of abstinence from all political conversation with persons not of the number of his 'immediate constitutional advisers,' was when, at the request or with the knowledge of his ministers, he would invite an interview with some peer or lord of Parliament, for the purpose of endeavouring to allay the violence of party strife, or of promoting the success in Parliament of ministerial measures which he deemed of vital consequences, and which were in jeopardy through the extent of opposition they were encountering. At such times, the king would not hesitate to point out to his auditors the great public

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[d] See *ante*, pp. 55, 195. And Corresp. Will. IV. with Earl Grey, vol. ii. p. 229.

[e] See *ante*, vol. i. p. 186. Corresp. Will. IV. with Earl Grey, vol. i. pref. pp. vii.–ix. The conduct of George III., in 1806, and later years, was characterised by a like scrupulous impartiality. See Yonge, Life of Lord Liverpool, vol. i. pp. 217–221. See also as regards the Prince Regent, *Ibid.* vol. ii. p. 242.

[f] *Ibid.* pp. 61, 62; and see p. 176.

advantages that in his judgment would ensue from a dispassionate and conciliatory consideration, in a spirit of compromise, of the particular question.[g]

but not so as to encroach on the independence of Parliament.

It is true that there is an ancient constitutional rule which forbids the sovereign from taking notice of any matter in agitation or debate, in either House of Parliament, until the same has been officially communicated for his concurrence, and which declares that no opinion of the sovereign, upon any bill or other proceeding depending in either House, ought to be reported, with a view to bias the votes of members.[h] This regulation is necessary in order to guard the independence of Parliament in the exercise of its legislative functions. But it was originally framed under circumstances widely different to those of our own time, and to remedy an evil which no longer exists. While, as regards the Houses of Parliament in their collective capacity, the rule is still capable of the strictest interpretation,[i] it must not be construed so as to infringe upon the ancient and undoubted privilege of every peer of the realm, as an hereditary councillor of the crown, to have an audience with the sovereign, for the purpose of making any representation he may think fit upon public affairs.[j] In general, the sovereign would receive such communications without comment; reserving for the ear of his constitutional advisers his personal opinion upon any debateable political question brought before him in this manner. But in extreme cases, when it may be advisable to endeavour to reconcile conflicting opinions and to conciliate rival parties, we are warranted by constitutional precedent in claiming for the sovereign a right to interpose, and with the weight which belongs to his elevated position to proffer counsel and advice to any

[g] See Corr. with Earl Grey, vol. ii. pp. 19, 21, 33, 38, 64, 198. Similar efforts were attributed, by public rumour, to her majesty queen Victoria, during the party conflicts upon the Reform question, in 1867.

[h] See *ante*, vol. i. p. 52. And see Jesse, Life of Geo. III., vol. i. pp. 337–347.

[i] See May, Parl. Prac. ed. 1863, p. 314.

[j] See *ante*, vol. i. pp. 51–53.

influential statesmen, irrespective of their particular standing towards the existing administration. But such an act of interposition is only suitable as a last resource, to restore harmony to the body politic. It is never justifiable for the purpose of creating an antagonism between the two Houses of Parliament; as when George III., in 1783, canvassed the House of Lords against the India Bill, which had passed the Commons, contrary to his most serious convictions, instead of withholding his sanction to the measure, dissolving Parliament, or (as he afterwards did) requiring the ministers who introduced it to resign.[k] It is only as a mediator in cases of emergency, and in order to remove obstructions to the progress of legislation, that the sovereign is constitutionally at liberty to express his individual opinions to peers and lords of Parliament, with the view of influencing their conduct in Parliament upon a particular question.[l] And any such expression of opinion ought to be strictly limited to advice and counsel, and should not (except in the case of persons in the civil service of the crown[m]) amount to an interference with the freedom of action of any member of the legislature.

Thus, in the year 1700, when a furious controversy was raging between the two Houses on account of an attempt by the Commons to pass a measure which the Lords disliked, but which was popular in the country, by tacking it to a bill of supply, William III., though he too objected to the measure, saw the extreme peril of any conflict upon such a question, and exerted himself to get the bill passed by the Lords. He let it be known that he considered the passing of the bill as, on the whole, a lesser evil than its acceptance. Whereupon the temper of the Lords underwent a considerable change.

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[k] See *ante*, vol. i. p. 52.

[l] Hearn, Govt. of Eng., p. 178.

[m] Such persons, if holding seats in Parliament, are subject to the rule which requires political unanimity in every member of the administration. 'Perfectly sensible of the necessity of giving a positive and unequivocal support to his government,' King William IV. insisted upon every member of his household, having a seat in either House, voting with ministers on their Reform Bill, in 1831 and 1832, under penalty of dismissal from office. His majesty's conduct in this matter was highly commended by the Prime Minister. Earl Grey, Corresp. with Will. IV. vol. i. pp. 290, 295; vol. ii. pp. 167, 179. And see *post*, p. 331.

Few indeed altered their votes, but a sufficient number abstained from voting to permit of the passing of the bill, without amendment.[n]

Again, in 1832, William IV. interposed to induce a majority of the Peers to accept the Reform Bill which had passed the House of Commons, as being a less painful and hazardous alternative than the proposed creation of a sufficient number of peers to ensure the success of the measure in the House of Lords. This proceeding, though upon the face of it an obvious interference with the independence of Parliament, and as such emphatically condemned by Sir Erskine May,[o] was approved of, at the time, by Earl Grey, the Prime Minister, as an act of conciliation, becoming in the sovereign, as well as the means of avoiding a far greater evil.[p]

Interposition of the Sovereign as a mediator, how to be exercised.

We may therefore admit that the personal interposition of the sovereign to mediate, in extreme cases, between contending parties in the state, is a commendable and appropriate service, and of benefit to the commonwealth. But it is most needful that he should bear in mind the weight that will naturally be attached to every word he utters, and carefully avoid giving expression to any opinions at variance with those entertained by his responsible advisers, unless, as in 1783, he is prepared to take the consequences of their resignation or dismissal.[q] Moreover, the substance of any such conversations should invariably be communicated to the Prime Minister, with as little delay as possible, in order to prevent any future misunderstandings, or inconvenience.[r]

During the Grey administration, in November 1831, a circumstance occurred which induced the Premier to address a word of caution to the king, lest the strict line of abstaining from the expression of political opinion towards persons not in his constitu-

[n] Macaulay, Hist. of England, vol. v. ch. xxv.

[o] May, Const. Hist. vol. i. p. 120. But see Hearn, Govt. of Eng., p. 177. A fuller examination of this case, in the light of the recently published correspondence of Earl Grey with King William IV., has led me to modify the opinion expressed in my first volume (pp. 65, 121) on this subject, when I followed Mr. May in condemning the interference of the king. I am now disposed to agree with Mr. Hearn in thinking the conduct of the king, under the circumstances, to have been justifiable.

[p] Earl Grey, Corresp. with Will. IV., vol. ii. pp. 439–452.

[q] See *ante*, vol. i. p. 53. Campbell's Chancellors, vol. v. p. 565.

[r] Earl Grey, Corresp. with Will. IV., vol. ii. pp. 40, 44, 48, 56, 147.

Constitutional restraint on the sovereign in such cases.

tional service might be overstepped without the knowledge or consent of ministers. In the lawful exercise of his privilege as a peer, the Duke of Wellington (then in opposition) undertook to write to his majesty, enclosing a memorandum on the great danger to which the country was exposed by the violence of the political unions, which had originated from the prevailing agitation on parliamentary reform. The king, without waiting to communicate this memorandum to any of his ministers, at once replied to the duke's letter, informing him that the Government were fully alive to the peril he referred to, 'and that there existed a cordial union of sentiment on the subject between his majesty and his government.' Immediately afterwards the king forwarded copies of this correspondence to the Prime Minister. Earl Grey could not refrain from expressing his surprise at the perusal of these papers, or from stating to the king that 'the propriety and constitutional character of them' appeared to him 'more than questionable.' His majesty replied that on receiving the duke's memorandum it had occurred to him 'that as a peer and a privy councillor his grace had a right to address to him by letter that which he might have communicated in a private audience if he had thought fit to ask it. That in any other case, his majesty might have sent the letter, &c., to Earl Grey, and confined himself to an acknowledgment of the receipt, and to informing the writer that it had been so disposed of.' Subsequently the king assured Earl Grey that 'his majesty's reply to any communication from his grace relating to such matters will in future be limited to a simple acknowledgment,' a promise which he afterwards adhered to, on the receipt of a second letter from the duke on the same subject. In expressing his satisfaction at being informed of this determination, Earl Grey added that 'it certainly might in many cases produce inconvenience, if his majesty were to express opinions to any but his confidential servants in matters which may come under their consideration, with a view to the advice to be submitted to his majesty upon them.[s]

Q. Victoria as a constitutional sovereign.

Upon the accession of our gracious queen, and until after her marriage with Prince Albert, her majesty has confessed that she permitted herself to be influenced by 'strong feelings of partisanship,' in favour of the Whigs, who were then in power. But 'the prince early understood the position which it becomes the sovereign of Great Britain to hold between conflicting political parties, and the line of conduct which, as the consort of that sovereign, it was

[s] Earl Grey, Corresp. with Will. IV., vol. i. pp. 413–426.

right for him to observe.' He therefore 'held himself aloof from all the trammels of party, its jealousies and animosities, and resolutely abstained from even the appearance of political partisanship. And not only so, but the feelings of that nature by which the queen so candidly admits that she was herself biassed at this time, soon ceased to show themselves, under the influence of his judicious counsels; and all parties have long borne willing testimony to the cordial and constitutional support which, when charged with the administration of the government, each party in turn received from the queen, and from the prince as her natural confidential adviser.'[t] In his wise and patriotic endeavour to inculcate upon her majesty the duty of strict neutrality in political matters, Prince Albert was ably seconded by Lord Melbourne, the then Prime Minister, who, though himself a Whig, took the opportunity of the royal marriage to urge upon the queen that the time had come when she 'should have a general amnesty for the Tories.' And upon another occasion, 'speaking of the Tories, against whom the queen was very irate, Lord Melbourne said, 'You should now hold out the olive-branch a little.'[u]

The queen's predilection for the Whigs at the commencement of her reign may be easily accounted for. It was partly attributable to her personal regard for Lord Melbourne, who guided her first steps as a sovereign with the most affectionate, loyal, and devoted care. It was also fostered and increased by certain proceedings in Parliament in relation to the naturalisation of Prince Albert, and the sum to be granted for the expenses of his household, wherein the Tory opposition evinced an unusual degree of party asperity.[v] These circumstances, however, although sufficient to account for and to explain her majesty's bias, afford no justification for it, as she herself has simply and touchingly confessed. But allowance

[t] Grey, Early Years of the Prince Consort, pp. 276, 284, 327.

[u] *Ibid.* p. 327.

[v] *Ibid.* chapters xi. xii. xiii. xiv.

must be made for the queen's youth and inexperience at this trying juncture: the more so, as since her marriage she has uniformly co-operated, in the most frank and unreserved manner, with every leading statesman, of whatever party, who has in turn enjoyed her political confidence.[w]

Right of access to the sovereign.

The privilege of access to the sovereign is accorded to every political head of an administrative office, who is at liberty to make whatever communications may be necessary on behalf of his own department. But all correspondence between the sovereign and a subordinate minister should be submitted to the Premier; if not beforehand, at any rate immediately after it has taken place.[x]

The sovereign is never present at meetings of the Cabinet Council. Formerly, as we have seen,[y] a different practice prevailed. But it needs no argument to prove that in order to be impartial, the deliberations of the responsible advisers of the crown upon affairs of state must be private and confidential.

Until ministers have come to an understanding as to the advice they will tender to their sovereign, upon any given occasion, it would be premature for them to communicate with the crown thereon. The Premier himself is under no obligation, either of duty or of courtesy, to confer with the sovereign upon any matter which is still under the consideration of the Cabinet.

Decisions of Cabinet to be submitted for the royal approval;

But so soon as any particular project, or line of policy, has been agreed to, with a view either to legislative or administrative action, it becomes the duty of the Premier, as the minister in whom the crown has placed its constitutional confidence, to take the royal pleasure thereupon; and to afford his sovereign an opportunity for the exercise of 'that constitutional criticism in all departments

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[w] See *ante*, vol. i. p. 187.

[x] Corresp. Will. IV. with Earl Grey, vol. i. pp. 46, 76, 79, 80, 83, 116, 354.

[y] See *ante*, p. 115.

of the state,' which is the right and duty of the Crown, and which in its operation is confessedly 'most salutary' and efficacious.[z]

neglect of this rule by Mr. Pitt in 1800;

A neglect of this rule by Mr. Pitt when, in the year 1800, his colleagues had coincided with him as to the expediency of a certain concession to the claims of the Roman Catholics, led to his loss of office, and to the withdrawal of the king's confidence from the ministry.[a]

It is somewhat remarkable that Mr. Addington, who succeeded Mr. Pitt as Prime Minister, should also have exposed himself to the charge of forgetting the deference due to his sovereign, when, in 1803, he made overtures to Mr. Pitt to resume the premiership, without having been authorised to do so by the king.[b] Mr. Pitt's reply was, that before considering the matter, 'he should first desire to know what his majesty's wishes might be on the subject.'[c] He afterwards communicated to Mr. Addington the exact conditions upon which alone he would consent to take office; but intimated that any discussion thereof must be 'considered merely as *common conversation*.' Adding that 'he must be fully acquainted with his majesty's pleasure, before he could say a word or pronounce a name which should be considered as binding.' These terms proved to be unacceptable to the Cabinet, and the negotiation ended, whereupon Mr. Pitt declared that he would 'in future receive no overtures but such as might be made by the express command of his majesty.' Several days afterwards, Mr. Addington informed the king of the matter, and offered to lay before him the whole correspondence. But his majesty, being annoyed that he had not been earlier consulted, refused to read

his defence to the king on a later occasion.

[z] Mr. Disraeli, Hans. Deb., vol. clxxxviii. p. 1113. And see *ante*, vol. i. pp. 201, 231.

[a] Massey, Geo. III., vol. iv. p. 550. Russell's Life of Fox, vol. iii. p. 202. Stanhope's Pitt, vol. iii. pp. 268–276. Mr. Pitt afterwards blamed himself for 'not having earlier endeavoured to reconcile the king to the measure about the Catholics.' *Ibid.* p. 287.

[b] See Sir G. C. Lewis's remarks on this affair, *ante*, vol. i. p. 84 *n.*

[c] Stanhope's Pitt, vol. iii. p. 432; vol. iv. p. 32.

the letters, or to take any notice of them. Two days later he said to Lord Pelham, 'It is a foolish business from one end to the other. It was begun ill, conducted ill, and terminated ill.'[d]

What matters require the previous sanction of the Crown.

It may seem difficult to determine, in every instance, precisely what matters ought to receive the assent of the crown, beforehand, and what might be properly undertaken at the discretion and upon the responsibility of the several heads of executive departments. But this much, at any rate, is clear, that no important acts of Government, which would commit the crown to a definite action, or line of policy, which had not already received the royal approbation, should be undertaken without the previous sanction of the sovereign. This rule is not meant to apply to the ordinary course of official communications, but to such only as, to any extent, may initiate a new line of policy, or upon which it might be conceived that a doubt would arise as to the sentiments that would be entertained by the sovereign, either in regard to the act itself, the method of its performance, or the language employed in relation thereto.[e] On the other hand, it is not necessary to consult the crown upon ordinary matters of official routine, or upon minor points of administration, which are suitable to be transacted by the direct authority of the head of the particular department of state responsible for the same.[f]

Cabinet minutes sent to the sovereign.

Any minutes that may be agreed upon by the Cabinet, and which are intended to be communicated to the sovereign, should be conveyed through the Premier, either by letter or at an audience, to be requested for the purpose. Such minutes should invariably record the names of the ministers present when they were adopted.[g]

[d] Stanhope's Pitt, vol. iv. pp. 36, 37. Jesse, George III., vol. iii. p. 308.

[e] May, Const. Hist., vol. i. p. 132. And see Corresp. of William IV. with Earl Grey, vol. ii. pp. 355, 364, 373, 376. And pp. 457–459.

[f] May, Const. Hist., vol. i. p. 135.

[g] Russell, Corresp. Fox, vol. i. p. 351. Stapleton, Canning and his Times, pp. 405, 419. Corresp. Will. IV. with Earl Grey, vol. i. pp. 2, 18, 38, 225; vol. ii. p. 336. As early as the reign of Richard II., we find the names of the members of the king's

The conclusions of the Cabinet in less important matters are usually made known to the sovereign by letter from the Prime Minister.[h] If any ministers present at a Cabinet Council dissent from a minute which has been agreed to by a majority of the ministers present, the names of the dissentients, and the extent of their opposition, should be communicated to the king.[i] Sometimes the substance of the deliberations of the Cabinet, upon a particular question, is explained to the king by the Premier at a personal interview, when if the matter be of sufficient gravity and importance, written minutes would be prepared of the conversation between the sovereign and his chief minister, in order to prevent misapprehension in communicating the same to other members of the Cabinet.[j]

In 1825, under the Liverpool administration, the king (George IV.) made an attempt to obtain separate memorandums from each Cabinet Minister upon a particular question, in lieu of a regular minute emanating from the Cabinet collectively. The king's object was to fix upon Mr. Canning, the Foreign Secretary, the responsibility for a policy which had been adopted by the Cabinet upon his recommendation, and to which the king was decidedly averse. It concerned the recognition of the independence of the Spanish colonies in America, which had been urged upon the Cabinet by Mr. Canning. George IV. was much opposed to this step, fearing that it was at variance with the engagements of Great Britain with the European powers. Accordingly, in reply to a Cabinet minute on the subject, the king requested to be informed by his Cabinet, 'individually (*seriatim*),' whether it was proposed to abandon the principles which had heretofore governed the relations of this country towards her European allies. In reply, the Cabinet

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Council who were present at any meeting uniformly mentioned. Minutes agreed upon are signed by the members present, before they are entered in the 'Book of the Council.' (Nicolas, Pro. Privy Council, vol. i. pp. xvii., xviii.) After the revolution of 1688, the opponents of an inner council, or Cabinet, attempted to introduce a regulation requiring all state affairs to be transacted in the Privy Council, and the resolutions agreed upon to be signed by the ministers who had consented thereto (see *ante*, vol. i. p. 43). This was for the purpose of ensuring a personal liability for all questionable measures; a security which is now obtained by the direct responsibility of the whole ministry for all acts of government. Knight, Pop. Hist. of Eng., vol. v. p. 168.

[h] Corresp. Will. IV. with Earl Grey, vol. i. pp. 34, 44.

[i] *Ibid.* pp. 431, 433; and vol. ii. pp. 70, 395.

[j] *Ibid.* vol. ii. pp. 68–80.

'humbly requested the king's permission to give their answer generally and collectively.' They declared that they had no wish to conceal from the king that there existed amongst them some difference of opinion as to the advice to be tendered to his majesty on this subject. But they had unanimously agreed in the opinion that the measures in progress respecting Spanish America were in no way inconsistent with his majesty's treaty obligations towards his allies, and that they ought to be carried out. Mr. Canning, however (with the consent of Lord Liverpool), addressed a special letter to the king, justifying his conduct as Foreign Secretary in the negotiations upon this affair. Baffled in the endeavour to make a breach in the ministerial ranks upon this question, the king's only option was to dismiss all his ministers or none. He chose the latter alternative; returned a conciliatory answer to Mr. Canning's letter, and accepted the advice of his Cabinet. Sustained by the Premier, and by his other colleagues, Mr. Canning was enabled to persevere in his South American policy, and ultimately to conciliate the goodwill of the king.[k]

Decision of the Crown upon advice of ministers.

In all his communications with the sovereign, the Prime Minister is bound to afford the most frank and explicit information in regard to measures agreed upon by the Cabinet, and submitted for the royal sanction.[l] And 'it is not merely the right, but the duty of the sovereign, to exercise his judgment in the advice they may tender to him.'[m] If the sovereign should not approve of the advice of his ministers upon any particular measure, they 'have then to choose whether they will abandon that measure, or tender their resignation.'[n] Under such circumstances, a minister 'is bound either to obey the [direction] of the crown, or to leave to the crown that full liberty which the crown must possess, of no longer continuing that minister in office.'[o]

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[k] Stapleton, Canning and his Times, ch. xxv. xxvi.

[l] The present Earl Grey, in the Corresp. of his father with William IV. says: 'Nothing of importance was done by the Government without being fully explained to his majesty in the letters addressed to him by his minister, while in those written by the king, or by his order, his opinions on the various questions brought under his notice, and the objections he sometimes felt to the advice offered to him, were stated without reserve. These objections again were met, and the policy of his confidential servants was defended, when necessary, in the answers returned to him.' (Preface, vol. i. pp. v. viii.)

[m] Grey, Parl. Govt. new ed. p. 80.

[n] Lord Grenville, Parl. Deb. (1807) vol. ix. p. 239.

[o] Lord John Russell, Hans. Deb. vol. cxix. p. 90.

Official papers to be sent to the sovereign.

In order to supply the crown with adequate means for exercising an independent judgment upon all affairs of state, provision has been made, by constitutional practice, for the regular transmission to the sovereign—ordinarily through the Prime Minister, or else through other official channels—of every despatch, report, or other paper, which it is material should be perused by the sovereign, or which may be of use to enable the sovereign to decide upon the merits of any measure submitted to him by ministers.[p]

Royal instructions given to the Foreign Secretary.

In the year 1850, it was deemed advisable that more detailed instructions should be conveyed to Lord Palmerston, who then held the seals of the Secretary of State for Foreign Affairs, in regard to the manner in which he should communicate with the crown upon matters appertaining to his own department. These instructions were framed when Lord John Russell was Prime Minister, and were by him communicated to Lord Palmerston. The memorandum was as follows:—

'The queen requires, first, that Lord Palmerston will distinctly state what he proposes in a given case, in order that the queen may know as distinctly to what she is giving her royal sanction. Secondly, having once given her sanction to a measure, that it be not arbitrarily altered or modified by the minister. Such an act she must consider as failing in sincerity towards the crown, and justly to be visited by the exercise of her constitutional right of dismissing that minister. She expects to be kept informed of what passes between him and the foreign ministers before important decisions are taken, based upon that intercourse; to receive the foreign despatches in good time; and to have the drafts for her approval sent to her in sufficient time to make herself acquainted with their contents before they must be sent off. The queen thinks it best that Lord John Russell should

[p] See *ante*, vol. i. p. 231. Corresp. Will. IV. with Earl Grey, vol. i. pp. 43, 114.

show this letter to Lord Palmerston.' Upon the receipt of this memorandum, Lord Palmerston wrote to the Premier, stating that he had taken a copy of it, and would not fail to attend to the directions it contained.[q]

Prime Minister, with consent of the crown, controls all State affairs.

The Prime Minister, being the recognised medium of communication between the sovereign and the heads of the various administrative departments, and the minister directly accountable to the crown for the government of the empire, must necessarily be cognisant himself of all important correspondence, which is received at or emanates from any of these departments. It is therefore required that all such papers should be regularly forwarded in the first place to the Prime Minister, then to the queen, and afterwards circulated amongst the other members of the Cabinet. By this regulation, the Premier is enabled to exercise the controlling influence which properly belongs to his office, over the proceedings of every department of state.[r] If any question should arise in the mind of the sovereign, in respect to any matter contained in the official papers forwarded for her examination and approval, she would communicate with the Prime Minister thereupon.[s] In this manner the whole administration is brought into due subordination to the supreme head. Should it be necessary for the sovereign to interpose, in order to control the conduct of any particular member of the ministry, she would always act upon the constitutional advice and responsibility of the First Minister of the crown.

The usage on this subject will be further elucidated by the narration of a circumstance which occurred in the year 1851, and which led to the dismissal from office of Lord Palmerston, the then Foreign Secretary, for an alleged infringement of the royal instructions above mentioned.

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[q] Hans. Deb. vol. cxix. p. 90.

[r] Sir R. Peel, in Report on Official Salaries, 1850. Evid. 326.

[s] Lord John Russell, in Hans. Deb., vol. cxix. p. 91. And see *post*, p. 425.

Upon the occasion of the celebrated *coup d'état* in France, of December 2, 1851, when Louis Napoleon, President of the French Republic, dissolved the legislative assembly, assumed dictatorial powers, and appealed to the people for a confirmation of his acts, the English Cabinet came to a general understanding that in this critical state of affairs in a neighbouring country it was the duty of England to observe a strict neutrality. A despatch to this effect, approved by the queen, was addressed to Lord Normanby, the British ambassador at Paris, by Lord Palmerston, as Secretary of State for Foreign Affairs. But before this official communication was written, it seems that M. Walewski, the French ambassador at the Court of St. James's, had informed his government of a private conversation he had had with Lord Palmerston, in which his lordship had 'expressed to him his entire approbation of the act of the president,' and his 'conviction that he could not have acted otherwise than he had done.' This statement was communicated to Lord Normanby by the French Minister for Foreign Affairs, whereupon Lord Normanby, conceiving that it was quite inconsistent with the tenor of his own instructions, reported the matter to Lord Palmerston, and requested further advice for his own guidance. This despatch, in due course, came into the hands of the Prime Minister, who wrote to his colleague for an explanation of it. Before receiving a reply from Lord Palmerston, a communication from the queen herself arrived, making enquiry of Lord John Russell, respecting the same despatch, expressing incredulity at such an intimation of opinion on the part of her Foreign Secretary, and asking for explanations. Accordingly, next morning (December 14), Lord John Russell sent a messenger to Lord Palmerston, urging for an answer to his former letter, but it was not until the 17th that this request was complied with. On that day he received copies of two despatches; one from Lord Normanby, which had just arrived, commenting on the awkward position in which he was placed, owing to his having learnt that language had been used by his official superior that was inconsistent with his own instructions. The other despatch was from Lord Palmerston, in reply to the foregoing, and entering into explanations with regard to his lordship's own views concerning the state of affairs in France, justifying the sentiments expressed in conversation with M. Walewski, and contending that they were quite compatible with the formal instructions given to Lord Normanby. This despatch was dated December 16, and had been forwarded to Paris without having been submitted for the sanction of her majesty or the concurrence of the Prime Minister and the other members of the Cabinet. This proceeding was regarded by Lord John Russell as being highly irregular and unconstitutional. While in matters of small importance a Secretary of State was free to act according to his own judgment, without

Dismissal of Lord Palmerston for neglect of royal instructions.

reference to higher authority, yet in an affair of such moment as that of giving the moral influence and support of England to the act of Louis Napoleon, it was evident that the approbation of the Prime Minister and of the whole Cabinet should have been first obtained, together with the express concurrence of the crown.

Viewing the matter in this light, Lord John Russell felt that it was his duty to call upon the queen to interpose for the vindication of her own authority; but while still deliberating on the course he should pursue, he received a long letter from Lord Palmerston, also dated December 16, and explaining the reasons which had induced him to approve of the act of the President of the French Republic. But these reasons were considered by Lord John Russell to be immaterial, and beside the question whether a Secretary of State was entitled, of his own authority, to write a despatch, in his official position as the organ of the queen's Government, in which his colleagues had not concurred, and to which the royal sanction had not been given. He therefore decided that he must advise the queen to remove Lord Palmerston from office. Before resorting to such an extreme measure, he wrote (on December 17) to inform her majesty that he was in correspondence with the Foreign Secretary on the subject of the wishes of the crown regarding despatches and diplomatic notes. At the same time he informed Lord Palmerston that he should take no further steps in the matter for a few days, trusting that he would make some proposition that would render it unnecessary to proceed further in the matter. In this he was disappointed. Lord Palmerston merely wrote in justification of his own conduct, especially in regard to the holding of 'non-official conversations' with Foreign Ministers, which he observed could not in the slightest degree fetter the action of his Government, and on the other hand tended to produce good understanding and to facilitate public business. Lord John Russell, in reply to this letter, stated that it left him no alternative but to request her majesty to appoint another Foreign Secretary. Accordingly, on December 20, he wrote to the queen, enclosing copies of the correspondence between himself and Lord Palmerston, and advising that his lordship should be required to give up the seals of the Foreign Office.

In coming to this decision, Lord John Russell abstained from consulting any of his colleagues, being satisfied that it was a proceeding 'for which, in order to avoid anything which might hereafter be tortured into the appearance of a cabal, he ought to assume the sole and entire responsibility.' However, two days afterwards, he met the Cabinet, read to them the entire correspondence, and appealed to their judgment to approve or disapprove of his conduct; stating that in the event of their disapprobation, he should retire from office. The Cabinet were unanimous in approving of the course taken by the Premier, he therefore proceeded at once to Windsor,

and advised the queen to make choice of Lord Granville, in the room of Lord Palmerston, which appointment was made accordingly.[t]

In explaining this transaction to the House of Commons (in the debate upon the address at the opening of the next session) Lord John Russell bore the fullest testimony to the zeal and ability in office of his late colleague, acquitting him of any intentional disrespect either to the crown or the Cabinet, although in reliance on his own judgment, he had, in the opinion of Lord John Russell, forgotten or neglected what was due to both. For his own part, Lord Palmerston, while denying that he had been guilty of any dereliction of duty, upon this occasion, nevertheless freely admitted the right of the Prime Minister to advise the queen to remove any member of the administration at his own discretion, and without assigning any reason to the person so removed.[u] After these explanations, the debate on the address was resumed.

Royal commands conveyed through a minister.

Any comment upon this case would be superfluous as it merely illustrates the constitutional doctrine already explained. But in reference to the mode in which the queen's prerogative was exercised, in the removal of the Foreign Secretary from office upon the advice of the Prime Minister, it is worthy of remark that when the royal commands are formally communicated to a minister of state, through an authorised channel, that is to say, by means of a responsible servant of the crown, it is unnecessary that any reason should be assigned for the same.[v]

Not only insubordination in office, but opposition to the measures of Government, or to the policy insisted upon by the Prime Minister, are sufficient grounds to warrant the dismissal of a member of the administration, whether he holds a seat in the Cabinet or not.

Insubordination in office.

Upon the formation of a ministry which embraces men of different shades of political opinion, it necessarily follows that there must be, to a greater or less extent, mutual concessions and compromises. But with the rare exception of certain questions, which by previous consent

[t] Hans. Deb. February 3, 1852, vol. cxix. pp. 89–100.

[u] *Ibid.* p. 112.

[v] See *ante*, vol. i. p. 389. Report on Military Organisation, Commons' Papers, 1860, vol. vii. p. 7.

Ministerial co-operation.

it is agreed shall be considered as 'open,'[w] it is an admitted principle that all the responsible ministers of the crown are bound to unite in furthering the measures of Government through Parliament, and in otherwise carrying out the policy which has been agreed upon by the Cabinet.[x] This policy is framed in the first instance by the Prime Minister in accordance with the principles of the party to which he belongs. It then forms the basis of negotiation between himself and those whom he may invite to assist him in carrying on the queen's Government.

Minority must yield.

During the political existence of a ministry, questions will occasionally arise which it is deemed advisable to submit to the decision of the whole Cabinet, in which case the minority are bound to assist in giving effect to the conclusions arrived at by the majority, or else to retire from office. In no other way is it possible to have a vigorous administration, with a decided policy upon important public questions.

It was under such circumstances that Lord Granville was compelled to retire from the Pelham administration, in 1744;[y] and Mr. Pitt from the ministry, of which he was the actual though not the nominal chief in 1761.[z] During the Grey administration, in June 1834, Lord Stanley, and other members of the Cabinet who were unable to agree with their colleagues on the question of appropriating the surplus revenues of the Anglo-Irish Church, retired from the ministry.[a]

In March 1867, lords Carnarvon and Cranbourne, and General Peel—the Secretaries of State for the Colonies, for India, and for War, respectively—retired from the Cabinet, and from office, because of objections they entertained to the Reform Bill which had been agreed upon by a majority of their colleagues.[b]

The exigencies of the public service, or the interests of Government, may sometimes require that there should be a readjustment of offices between different members

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[w] For the theory and practice in regard to 'Open Questions,' see *post*, p. 327.

[x] Hans. Deb., vol. cxxvi. p. 883. For the origin and development of this principle, see *ante*, pp. 102-109.

[y] See *ante*, p. 125.

[z] *Ante*, p. 128.

[a] See *ante*, vol. i. p. 121.

[b] Hans. Deb., vol. clxxxv. pp. 1309, 1340.

of an administration, or the withdrawal of a particular minister, and the substitution of some more efficient or more desirable person in his place. Such expedients are not infrequently resorted to as a means of strengthening a Cabinet, and of securing for it a larger measure of public support. They are usually effected by mutual consent and amicable agreement; although cases of a different description, and which savour more or less of intrigue, are not unprecedented. Exchange of ministerial offices.

So far as regards the department of the Secretariat, an interchange of offices is easily arranged. In a constitutional point of view, there is but one Secretary of State, and though the office now consists of five distinct and separate branches, the functions of either secretary may, upon emergency, be discharged by another. The letters patent conferring the appointment are couched in general terms—as of 'One of Her Majesty's Principal Secretaries of State;' the assignment of special duties is a subsequent and arbitrary arrangement that may be altered at any time.[c]

No exchange can be made between other officers of the administration without a previous resignation of the place intended to be relinquished, and a formal appointment to the new office; which, in the case of a member of the House of Commons, until very recently vacated the seat. This was long felt to be a hardship to individuals, and a serious impediment to the reconstruction of a Cabinet. But although some change in the law in this respect was advocated by leading statesmen, without distinction of party, it was not until the passing of the new Reform Act, in 1867, that this restriction upon the readjustment of a ministry was removed, and authority given for the acceptance of another ministerial office by a member whose previous acceptance of a similar office had been endorsed with the approval of his constituents, without requiring a new election.[d]

[c] See *post*, p. 493.

[d] See *post*, p. 274.

Dissensions in the Cabinet.

It cannot be expected that internal dissensions in a Cabinet, however much to be deprecated, should never occur. No cause of ministerial weakness has been more fruitful of disaster; but when men of activity and talent, each having political prepossessions in favour of particular views, or being actuated by personal motives of self-interest, unite in the endeavour to form a ministry, they will sometimes clash. The supremacy of a master mind in the person of the Prime Minister is the best security for strength and unanimity in an administration. But even this has not always availed to preserve peace. Our political history furnishes many instances of governmental difficulties from this cause, which is not peculiar to any time, or to the predominance of any party. The undermentioned examples may suffice to illustrate the usual character of these difficulties, and to show the various methods that have been resorted to at different times to bring about the rearrangement of an existing Cabinet with a view to the extrusion therefrom of particular members.

Thurlow.

The disagreement between Lord Chancellor Thurlow and Mr. Pitt, which ended in the removal of the former from office, by command of the king, has been elsewhere noticed [e] and needs no further mention. But as a case in point, it has a peculiar value in this connection. It is worthy of remark that Lord Thurlow was a great favourite of George III., and that nothing but the alternative of Mr. Pitt's own resignation, and the consequent break up of the ministry, could have induced the king to consent to his extrusion from the Cabinet.

Granville.

In 1744, during the Pelham administration, the principal members of the Cabinet, including the Prime Minister himself, were dissatisfied with the foreign policy of Lord Granville, the Secretary of State for Foreign Affairs. They accordingly drew up a remonstrance to the king (George II.) upon the subject, representing their united determination to resign, unless his majesty would dismiss Lord Granville from office. The king was very unwilling to accede to this demand, as Granville was his favourite minister, and the one whose policy more especially accorded with his own views. Nevertheless, the opponents of the Foreign Secretary and of his policy were too powerful to be disregarded, and at length the

[e] See *post*, p. 328.

king was obliged to give way. He called upon Lord Granville to retire and transferred the seals to another member of the Cabinet, who enjoyed the confidence of his colleagues.[f]

The foregoing cases are chiefly noticeable on account of the personal attachment of the sovereign to the minister whose conduct had lost him the favour of his associates in office, and they indicate the supremacy of political considerations over personal predilections, on the part of the king. The cases which follow are of a different description. They do not involve any antagonism with the sovereign, but exclusively concern internal dissensions or disagreements between Cabinet ministers themselves.

Rockingham.

In 1766, during the Rockingham administration, the Earl of Northington was Lord Chancellor. The ministry were in a feeble state, and from the tone of recent debates in parliament, it was evident that a political crisis was at hand. Their overthrow was actually brought about, however, by an intrigue on the part of Lord Northington. After a private conference with Mr. Pitt, the Lord Chancellor, unknown to his colleagues, waited upon the king, and informed him 'that the ministers could not go on, and that at all events he himself must resign the great seal, and would attend cabinet councils with Lord Rockingham no longer.' He concluded by advising his majesty to send for Mr. Pitt. The king very willingly adopted this advice, and the negotiation with the Great Commoner was successful. Northington was rewarded by his new allies with the office of President of the Council.[g]

Canning and Castlereagh.

Another instance of ministerial differences is that of the memorable quarrel between Mr. Canning and Lord Castlereagh in 1809, during the administration of the Duke of Portland. At this time the seals of the War Department were in the hands of Lord Castlereagh, and those of the Foreign Office in charge of Mr. Canning. The latter was dissatisfied with the way in which the war with France was being carried on, under the superintendence of the Minister for War. Memorandums in opposition to each other's views were circulated by both ministers amongst their colleagues, and the king himself was appealed to on the subject. Being unable, by these means, to induce Lord Castlereagh to alter his policy, Mr. Canning at last wrote to the Prime Minister, expressing his conviction that 'a change either in his own department or in Lord

[f] Harris, Life of Hardwicke, vol. ii. pp. 77–81.

[g] Campbell, Lives of the Chancellors, vol. v. pp 207–213. Mahon, Hist. of Engl., vol. v. p. 235.

Castlereagh's appeared to him to be expedient for the public service,' and stating his own perfect willingness to retire, if necessary. It appears to have been the wish of Mr. Canning that the Marquess of Wellesley should be placed at the head of the War Department, and this plan was generally approved of by the ministry. The whole Cabinet, with the exception of Lord Castlereagh, were aware of this correspondence, and they agreed with the Duke of Portland in urging Mr. Canning to withhold his resignation. At the same time they forbore to acquaint Lord Castlereagh that his removal had been resolved upon, notwithstanding that Mr. Canning had repeatedly requested that no concealment should be practised towards his colleague, and had been led to believe that he was fully informed of the whole facts. It seems, however, that the Duke of Portland timorously concealed the true state of the case from Lord Castlereagh, until concealment was no longer possible. Disappointed at the delays in effecting the change, which he understood had met with the concurrence of his brother ministers, Mr. Canning threatened himself to resign. This led to a crisis. Lord Castlereagh was put in possession of Mr. Canning's communications, from which he learnt that his own removal had been determined upon by his colleagues, and agreed to by the king, and he naturally concluded that the whole affair was an intrigue on the part of Mr. Canning to eject him from office, in order to secure his own aggrandisement. Accordingly he sent Mr. Canning a challenge, which was accepted, and a duel[h] was fought. Whereupon both parties retired from the Cabinet, a result which was speedily followed by the break up of the Portland administration.[i]

In reviewing these transactions, we are forced to conclude that the Prime Minister was the most to blame, for disingenuously concealing from Lord Castlereagh the nature of Mr. Canning's recommendations, in respect to the administration of the War Department, and the general agreement of the Cabinet therein. Had the Duke of Portland been candid and sincere, Lord Castle-

[h] Duels between Cabinet Ministers and other members of Parliament have been happily of very rare occurrence. In 1798, a hostile meeting took place between Mr. Pitt and Mr. Tierney, in consequence of words of heat in debate in the House of Commons (see Parl. Hist., vol. xxxiii. p. 1462), and in 1830 the Duke of Wellington challenged Lord Winchelsea, for words spoken in the House of Peers, during the debate on the Roman Catholic Emancipation Bill. A duel ensued, happily without any serious results. This is deserving of mention, as being the last hostile encounter between statesmen before this barbarous practice went into desuetude. Alison's Hist. of Europe, 1815 to 1852, ch. 22, sec. 7. Edinb. Rev. vol. cx. p. 92. Smith's Parl. Rememb. 1862, p. 23.

[i] Alison, Life of Castlereagh, vol. i. p. 309–312. Stapleton, Canning and his Times, pp. 173–181. Edinb. Rev. vol. cviii. p. 320.

reagh could never have charged Mr. Canning with intriguing against him, and at the same time conniving at the concealment of a matter so closely affecting his position in the ministry.

Amicable exchange of offices.

In 1833, when Lord Grey was Prime Minister, and the seals of the Colonial Office were held by Lord Goderich, a great question concerning negro emancipation in the West Indies was pending, and it was thought desirable that the office of Secretary for the Colonies should be held by a man possessing more weight and influence in the House of Commons, and who could enforce his views with greater eloquence, than Lord Goderich. Lord Stanley, then Secretary for Ireland, was considered, under these circumstances, as the most fitting man for the post. Accordingly Lord Grey informed Lord Goderich that it would be of great service to the Government if he would retire in favour of Lord Stanley, and undertake the less prominent office of Lord Privy Seal. The proposition was not very palatable to Lord Goderich, because it was liable to be misunderstood by the public; nevertheless, he would not allow his personal feelings to interfere with anything that was regarded as advantageous to the Government, so he agreed to the arrangement, and informed Lord Stanley of his consent, without entertaining any feelings of annoyance or anger against that nobleman. This transaction reflects the highest honour upon the patriotism of Lord Goderich, the more so as he had formerly filled the office of First Minister of the Crown.[j]

Dissensions arising out of the war in the Crimea.

Another example of disagreement in the Cabinet, followed by the attempt of a minister to obtain the removal of a colleague, occurred in 1854, during Lord Aberdeen's administration. This case is peculiarly instructive, as while it undoubtedly gave rise to strong personal feelings on both sides, it was conducted throughout in an honourable manner, without concealment or intrigue, and is therefore a suitable precedent, for guidance, under similar circumstances. Lord John Russell, who then filled the post of President of the Council, partook of the wide-spread dissatisfaction at the conduct of the Crimean war, by the executive authorities at headquarters. He attributed the disasters which had occurred principally to the defective system of administration, and was of opinion that if an exchange of offices could be effected between the Secretaries for War and for the Home Departments, and the seals of the War Department be entrusted to Lord Palmerston, instead of to the Duke of Newcastle, it would ensure a greater degree of

[j] Hans. Parl. Deb., vol. cxxxvi. pp. 1220, 1280. Haydn, Book of Dignities, p. 97.

In 1820, the Prime Minister (Lord Liverpool) offered to Mr. Canning, the Foreign Secretary, to change his office for that of Home Secretary, for reasons personal to Mr. Canning, but the offer was declined. Before the end of the year, Mr. Canning retired from the administration. (Stapleton, Canning and his Times, p. 204.)

vigour and efficiency: it being a commonly received opinion that Lord Palmerston, from his known personal character, was the fittest man who could be found for that office. But independently of his personal qualities, his position as a member of the House of Commons would, in the opinion of Lord John Russell, tend materially to strengthen his hands in the administration of this department. The objection entertained by Lord John Russell to the Duke of Newcastle was not that he was personally unfit for the charge of the War department, but that, under existing circumstances, it was necessary either that the Prime Minister himself should take the lead in the eager prosecution of the war, or else that the War Minister should be possessed of extraordinary authority, power, and energy. Lord Aberdeen (the Premier), he considered, was not a man whose disposition would lead him to act with the promptitude and energy required; it was therefore the more imperative that the War Secretary should be a person of pre-eminent energy and authority, in order that their combined action should lead to a successful issue.[k] After verbal communication on the subject with Lord Aberdeen, Lord John Russell addressed him a letter, setting forth his reasons for advocating the proposed change, and calling upon the Prime Minister to use his influence with his colleagues to induce them to acquiesce in such a distribution of offices as he would consider most advantageous to the crown and to the country. In another note, written on the following day, Lord John Russell exonerated the Duke of Newcastle from any blame in the conduct of the war, and attributed the unfortunate results to the lack of proper authority, and means of controlling subordinate departments. He also requested that his former communication should be shown to the duke, before any action was taken upon it. In reply, Lord Aberdeen stated that he had shown the letter to the Duke of Newcastle, and also to Mr. Sidney Herbert, the Secretary at War, whose position would be affected by the proposed plan, and had been strongly urged by both these gentlemen to adopt any arrangement with regard to their offices he might think conducive to the public service. Upon the merits of the plan itself Lord Aberdeen did not agree with Lord John Russell, considering that it would be viewed by the public, not as the transference of an important office into the hands of a member of the House of Commons, with a view to increase its efficiency, but as a mere substitution of one man for another. In justice to the duke, he did not think that his colleagues, without stronger and more imperative reasons, would wish to place him in that position. Neither did he think that Lord Palmerston, at his advanced age, would be willing or able to under-

[k] Subsequent explanations, by Lord John Russell, in Hans. Deb. vol. cxxxvi. p. 1275.

take the laborious and complicated duties proposed to be entrusted to him. Some further correspondence passed between Lord John Russell and the Premier on the subject; but the result was that Lord Aberdeen adhered to his objection to the proposed scheme and declined to recommend it to the queen, expressing his conviction that any such alteration would be of doubtful advantage to the public, and unfair and unjust towards a colleague. He further declared his opinion that all changes of this kind, unless absolutely necessary, only tended to weaken a government. Whereupon Lord John Russell declared his intention of submitting the matter to the Cabinet. This correspondence was afterwards circulated amongst all the Cabinet ministers, but Lord John Russell did not adhere to his expressed intention of appealing to them on the question, and in point of fact it never was formally brought before the Council.[1] The refusal of the Premier to concur in his views, led Lord John Russell at first to doubt whether he ought to continue in the ministry, but at the solicitation of Lord Palmerston and of his colleagues generally he was induced to remain.

Parliament assembled in the following January and the state of the war became at once the subject of discussion. Mr. Roebuck gave notice of a motion in the House of Commons, for a committee to enquire into the conduct of the war, which was tantamount to a vote of censure upon the War Department. Feeling his inability to resist this motion, with the opinions he entertained, and had expressed to his colleagues on the subject, Lord John Russell resigned office, before the debate commenced. Referring to this proceeding in the course of the debate, both Lord Palmerston and Mr. Gladstone blamed his lordship for resigning without having first afforded his colleagues an opportunity, before the meeting of parliament, of deciding upon his proposal in favour of a change in the head of the War Department, as they had reason to believe that he had abandoned the views he had formerly entertained upon the subject. He should, they thought, have pressed the question at that time, and in the event of a decision against him, should then have retired from the Cabinet. In reply, Lord John Russell admitted that such a course would have been preferable, but declared that he had wished to continue in the Cabinet as long as possible; although he could no longer remain when it was proposed to institute an enquiry which his colleagues had determined to resist, but which he could not

[1] Report of Sebastopol Committee, Commons' Papers, 1854–5, vol. ix. part 3, Evid. 21319–21347. Correspondence, in appendix to same vol. pp. 355–360. It appears, however, that the Duke of Newcastle's offer to retire from the post of War Minister was laid before his colleagues by Lord Aberdeen, and disapproved by all of them. Hans. Deb., vol. cxxxvi. p. 1245.

consistently oppose.[m] The retirement of Lord John Russell was speedily followed by the resignation of the whole ministry, owing to their defeat in the House of Commons upon Mr. Roebuck's motion. After the late Premier had made his late ministerial explanations, in the House of Lords, he was followed by the Duke of Newcastle, who claimed the privilege of taking the unusual course of adding some explanations of his own, in defence of his character and conduct, after the statements made by Lord John Russell in the House of Commons. His grace ably vindicated himself from erroneous imputations, affecting his personal character, and satisfied the House that his unsuccessful administration of the war had arisen from defects in the system, and not from errors on his own part;[n] a conclusion which subsequent events fully corroborated.

Supremacy of the Prime Minister.

The foregoing precedents serve also to confirm the doctrine previously explained in respect to the supremacy of the Prime Minister in the Cabinet. If any member of the Cabinet desires a rearrangement of ministerial offices, he must make known his views to the Prime Minister. If he wishes to resign, he should in the first instance communicate his intention to the Premier, in order that through him his intended resignation may be communicated to the sovereign. It is the First Minister alone who, of his own choice, can make changes in an administration, subject, of course, to the approbation of the sovereign. If he himself should vacate his office by death, or resignation, or be dismissed, the ministry is *ipso facto* dissolved. Individual ministers may retain their offices, if permitted by the sovereign, and may form part of a fresh combination with another head; but this would be a new ministry, and the colleagues of the incoming Premier must make a fresh agreement with him.

The substantive power which is wielded by the Premier over his colleagues in office is necessarily very great. If he be a man of inferior ability, without very decided opinions, his authority and influence will be naturally impaired, and the influence of the strongest mind in the Cabinet will probably predominate. But if he be a man

[m] Commons' Debates, January 26 and 29, and February 5, 1855.

[n] Lords' Debates, February 1, 1855.

of powerful intellect, or of decided opinions, he will command the support of his fellow ministers, and leave them no alternative but submission or resignation.[o] A Prime Minister will rarely interfere in the departmental arrangements of his colleagues, or in the distribution of the patronage which is placed in their hands; but he will require that all matters which in any degree affect the policy of the administration, shall be submitted for his approval, and that if need be the whole strength of the government, including that which is afforded by the exercise of the patronage of the crown, should be employed in the furtherance of his political views, and for the purpose of enlarging the influence of the Cabinet of which he is the head.

Ministerial resignations.

The resignation of office by a Cabinet Minister although properly made known to the crown through the Prime Minister, as the official channel of communication between the sovereign and the Cabinet, may be consummated at a personal interview with the sovereign—usually granted previous to the assembling of a Privy Council, at which his successor is formally appointed—for the purpose of delivering up into the royal hands the symbols of office, and in order to afford an opportunity for explanations on the part of the retiring minister.[p] Under such circumstances, however, it is a courtesy due to the head of the administration, to acquaint him previously of an intended resignation, so as to enable him to take the necessary steps for filling up the vacant office without delay.

Dismissals.

When the dismissal of a subordinate member of the administration has been determined upon, it is customary for a formal letter of dismissal to be addressed to the person in question by the Prime Minister, after he has

[o] Stapleton, Canning and his Times, p. 179. Thus Lord Wellesley resigned the seals as Foreign Secretary in 1812, because he would no longer serve *under* Mr. Perceval, whom he considered incompetent for the office of Premier. He was quite willing to serve *with* Mr. Perceval, under a common chief, but not in subordination to him. Parl. Deb. vol. xxiii. pp. 367–370. Pearce, Memoirs of Wellesley, vol. iii. p. 209.

[p] Pellew's Life of Sidmouth, vol. iii. p. 395. Edinb. Rev. vol. cx. p. 79 *n*.

taken the royal pleasure thereon.[q] In the case of the retirement of a Lord Chancellor, whether by resignation or dismissal, it is usual for the delivery of the great seal to take place either at a meeting of the Privy Council, or at an audience granted to him in the royal closet for that purpose, as the '*clavis regni*' is too important an instrument to be entrusted to anyone but its lawful custodian or the sovereign himself.[r] If not surrendered to the sovereign in person, it should only be given to one who claims it with a formal warrant under the privy seal or sign manual.[s]

Where, in the exercise of the royal prerogative a whole administration is dismissed, letters of dismissal are written by the newly appointed Secretary of State, in the name of his sovereign.[t] If the retirement of a ministry takes place by voluntary resignation, it is customary for the individuals composing the same to assemble at the palace, and to be separately introduced into the royal closet for the purpose of delivering up into the hands of the sovereign their respective wands, seals, keys, and other official badges,[u] or for the ceremony to take place at a meeting of the Privy Council, at which, also, the newly-appointed ministers are invested with the insignia of office. But should a personal interview be objectionable to the sovereign, he may direct the surrender of the symbols of office to be made to some one else, whom he may appoint to receive them.[v]

Remaining in the Cabinet after resignation of office.

The resignation of an office which is held in connection with a seat in the Cabinet necessarily involves a relinquishment of the right to attend Cabinet meetings, unless specially invited by the sovereign, acting upon the advice

[q] Mirror of Parl. 1828, p. 1694.

[r] Campbell's Chancellors, vol. v. p. 613.

[s] *Ibid.* i. 23.

[t] Jesse, Life of George III., vol. i. p. 307. Campbell's Chancellors, vol. v. p. 565.

[u] *Ibid.* vol. vi. p 565. The keys of Council or Cabinet boxes (not being insignia of office) should be returned to a Secretary of State or other minister, and not given to the king. Jesse, Life of George III., vol. iii. p. 437.

[v] Campbell's Chancellors, vol. v. p. 565.

of the Prime Minister, to retain the same, either with or without some other departmental office.

When Lord Sidmouth resigned the seals of the Home Department, at the close of a long official career, he retained his seat in the Cabinet, at the express command of the king, and by the earnest request of all his colleagues.[w]

Case of Lord Loughborough.

A singular circumstance occurred at the close of Mr. Pitt's first administration, in 1801, which is deserving of notice, in this connection. Lord Loughborough, who then held the great seal, was very unwilling to part from it, and clung to the hope that he would be invited to continue in office by Mr. Addington, the incoming Premier. Loughborough was under the impression that he was in great favour with the king, on account of his fidelity to his royal master in the transactions concerning Roman Catholic Emancipation, which had led to the dismissal of Mr. Pitt. The king, however, had latterly become better acquainted with his lordship's character, and as a natural consequence had resolved to get rid of him, and to confer the great seal upon Lord Eldon. The new Ministry took office on March 10, but the transfer of the great seal was postponed for more than a month, on account of personal reasons which induced Lord Eldon to delay his formal acceptance of office. On April 14, however, Loughborough was called upon to surrender the great seal into the hands of the king and to give place to his successor. The ex-Chancellor, nevertheless, to the unspeakable surprise of the new Premier, retained his key of the Cabinet boxes, and even continued, though unsummoned, to attend the meetings of the Cabinet council. This lasted for about ten days, during which he was treated with respect by the unwilling councillors; but as he seemed quite insensible to the impropriety of his conduct, he at length received his dismissal, in a polite letter from the Prime Minister, dated April 25, which informed him that the writer 'had reason to believe that his majesty considered his lordship's attendance at the Cabinet as having naturally ceased upon the resignation of the seals, and supposed it to be so understood by his lordship.' That mistaken delicacy, perhaps, had hitherto delayed any communication to him on the subject, with a view to remove this misconception, but that a sense of duty to the king, as well as to Lord Loughborough himself, would not permit it to be withheld any longer.[x] This letter had the desired effect, and the pertinacious ex-Chancellor unwillingly retired into private life.

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[w] Pellew's Life of Sidmouth, vol. iii. pp. 393, 396.

[x] Campbell's Chancellors, vol. vi. pp. 307, 314. We learn from Pellew's Life of Sidmouth (vol. i. pp. 312, 315) that Loughborough was all consternation, when the fate of the Government was announced; that he placed himself in Mr. Addington's hands, and was ready to accept the office of President of the Council which the new Premier designed to give him; but that

New ministry.

Upon the resignation or dismissal of a whole ministry,[y] it will devolve upon the sovereign to communicate with some peer or member of the House of Commons, who may possess sufficient influence with his party to be suitably entrusted with the task of forming a new administration. We have elsewhere discussed the powers and duties of the sovereign upon such a contingency, and the constitutional practice which governs the choice of ministers by the crown.[z] We have next to enter upon a new field of enquiry, and to investigate the relations of ministers of the crown to the Houses of Parliament. This important subject may be appropriately reserved for another chapter.

the king appears to have been averse to his being included in the new administration. See Edinb. Rev. vol. ciii. p. 356; Stanhope's Pitt, vol. iii. p. 323.

[y] For the causes of the retirement of every Ministry, from 1782 to the present time, see *ante*, vol. i. pp. 162–166.

[z] *Ibid.* pp. 210–227.

CHAPTER IV.

THE MINISTERS OF THE CROWN IN PARLIAMENT.

HAVING traced the origin and development of Ministerial Responsibility, as a foundation principle of the English Monarchy, and followed the fortunes of the Cabinet Council from its earliest appearance on the stage of history to its final acceptance as an essential part of our governmental system, we must now consider the mode in which this comparatively modern institution is brought into active co-operation with the other and more ancient portions of the political fabric.

Responsibility of ministers to Parliament.

It is by means of the introduction of the Ministers of the crown into Parliament for the purpose of representing therein the authority of the crown, and of carrying on the government in direct relation with that body, that the responsibility of ministers for every act of government is practically exemplified and enforced.

The whole executive functions of the crown have been entrusted to ministers, chosen by the sovereign, and personally accountable to him. In order that those functions may be exercised in conformity with the most enlightened opinions of the great council of the nation, it is indispensable that the king's ministers should be selected from amongst that council. Having in their individual capacity as members of one or other of the legislative houses, a right to sit therein, they are thus brought face to face with those who are privileged to pronounce authoritatively upon the policy of the government, and whose consent must be accorded to their very continuance in office as ministers of the crown.

Ministers, on their part, being the chosen and confidential servants of the sovereign, are necessarily the depositaries of all the secrets of state, and have access to the highest sources of information on every political question. They are usually men who from their ability and experience are peculiarly qualified to guide the deliberations of Parliament, and to aid their fellow members in forming sound conclusions upon every public matter that may be brought before them. They distribute the patronage of the crown at their own discretion; which, in itself, adds very materially to their authority and influence. These advantages are of inestimable service in enabling them to mature and propound acceptable measures, and in facilitating the progress of the same through the legislative chambers.

Responsibility to House of Commons.

On the other hand, either House of Parliament is at liberty to give free expression to its opinion upon every ministerial act or measure; and no administration can long remain in office that does not possess the confidence of Parliament, and particularly of the House of Commons. In giving or withholding their confidence, the Houses of Parliament are only restrained by considerations of public policy. Unless they are satisfied that a ministry, which does not fully represent their political sentiments, can be replaced by another, more acceptable and efficient, they will probably be content with vigilant supervision and control over its proceedings and recommendations, rather than to incur the hazard of a change of government. But if they believe that the direction of public affairs ought to be entrusted into other hands, they have only to declare—either expressly or impliedly—that ministers have forfeited their confidence, and a change must inevitably take place. So that, whether directly or indirectly, the ultimate verdict upon every exercise of political power must be sought for in the judgment of the House of Commons.

Let us proceed to examine in detail the various points

included in the foregoing definition of parliamentary government. The subject will naturally admit of being divided into three heads: I. The presence of the ministers of the crown in parliament. II. The functions of ministers of the crown in relation to Parliament. III. The responsibility of ministers to Parliament, and particularly to the House of Commons.

I. *The presence of the Ministers of the Crown in Parliament.*

We have already, in a former chapter, disposed of the historical part of this enquiry, and have described the position occupied by the king's ministers in Parliament anterior to the revolution of 1688;[a] and the growth of the principle, which was not formally acknowledged until after that epoch, that the presence of responsible ministers in both chambers of the legislature is a fundamental obligation, under our constitutional system.[b]

It will now be our endeavour to take a practical view of this subject, and to explain the established law and custom of Parliament upon the several questions connected therewith.

Cabinet ministers must be in Parliament

While, as we have seen,[c] there is no absolute necessity for every member of the cabinet to hold a departmental office under the crown, the spirit of the constitution requires that every one occupying a seat in the Cabinet should also be a member of one or other of the Houses of Parliament.[d] And no one should be introduced into the cabinet, or be permitted to continue therein, who is out of Parliament; unless he is likely to be returned by some constituency within a reasonable period.

Cabinet ministers out of Parliament for a time.

During the short-lived administration of Mr. Canning, in 1827, the office of Postmaster-General, which has been usually held by a

[a] See *ante*, p. 75.
[b] See *ante*, p. 86.
[c] *Ante*, p. 154.
[d] Macaulay, Hist. of Eng. vol. iv. p. 435. Mr. Lambe (Lord Melbourne) in Parl. Deb. vol. ix. p. 287. Lord John Russell, Hans. Deb. vol. cx. pp. 230, 231. Lord Stanley, *ibid.* vol. clxii. p. 1901.

Peer—because, until 1866, it disqualified for a seat in the House of Commons[e]—was filled by a commoner, Lord Frederick Montagu, who had no seat in Parliament. But so much inconvenience arose from this great department being unrepresented in either House, that thenceforth, until 1868, the office was invariably conferred upon a member of the House of Lords.[f]

When the Wellington administration was formed in July 1828, the Right Hon. W. Vesey Fitzgerald, who at the time represented the county Clare in the House of Commons, was appointed to the joint offices of President of the Board of Trade and Treasurer of the Navy, with a seat in the Cabinet. This, of course, vacated his seat in Parliament; but on going for re-election he was defeated by Daniel O'Connell.[g] He continued out of the House, although retaining his place in the ministry, until March 1829, when he was returned for the borough of Newport.[h] Adverting to this case, some years afterwards, the Duke of Wellington remarked that it was unprecedented and objectionable, but that it occurred at a time (unlike the present), when it was possible on any day to find a seat for a government candidate.[i]

In 1835, when Sir Robert Peel's ministry was being constructed, it was determined to confer a seat in the Cabinet upon Sir George Murray, the Master-General of the Ordnance. He accordingly became a candidate for a seat in the House of Commons, but was defeated in the county of Perth. It was then agreed between Sir R. Peel and the Duke of Wellington, that it was inexpedient, and would establish an inconvenient precedent, were he to continue in the Cabinet. After his rejection at Perth, Sir G. Murray volunteered to resign his departmental office, but Sir R. Peel wrote and urged him to retain it. He added, however, 'I have more difficulty about the Cabinet, and I need not say solely and exclusively on the score of constitutional precedent. The holding of a seat in the Cabinet by a responsible adviser of the Crown—that adviser being neither in the House of Lords nor Commons—is, I fear, extremely unusual, if not unprecedented, in modern times. . . . Of course if there were any immediate prospect of your return, the objection could not apply.'[j] After this Sir George ceased to attend the Cabinet Councils, although he continued at the head of the Ordnance Department until a change of ministry occurred.[k]

Upon the formation of the Melbourne ministry on April 18, 1835, Lord Palmerston was appointed Foreign Secretary, though at

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[e] See *post*, p. 487.
[f] Hans. Deb. vol. clxxxii. p. 1077.
[g] Smith's Parlts. vol. iii. p. 197.
[h] *Ibid.* p. 18; Annual Register, 1828 (Chronicle), p. 191.
[i] Peel, Memoirs, vol. ii. p. 51.
[j] *Ibid.* pp. 50–52.
[k] Hans. Deb. vol. lxxxiv. p. 758; Hadyn, Book of Dignities, p. 192.

the time without a seat in Parliament; having been defeated at the previous general election, and no vacancy having since occurred for which he could offer. About a month afterwards enquiry was made of Ministers in the House of Commons whether any arrangements were in contemplation to obtain a seat for his lordship in either House. Lord John Russell declined to answer this question, merely observing that the absence of Lord Palmerston was only temporary; and that were it 'continued for any length of time these might be very proper questions.'[l] But before the close of the month of May Lord Palmerston was returned for the borough of Tiverton, in room of Mr. Kennedy, who accepted the Chiltern Hundreds in his behalf.[m]

In December 1845, Mr. Gladstone, on being appointed Colonial Secretary in Sir R. Peel's administration, was defeated when he went for re-election in the borough of Newark. He continued out of Parliament until after the resignation of this ministry, which took place in June 1846. The fact of his absence from Parliament was commented upon in the House of Commons on the 6th March, but no explanations were given by the Government, except that he continued to attend the Cabinet Councils.[n]

In the year 1861 the Palmerston administration had no Cabinet or other minister specially representing Ireland in the House of Commons, save the Chief Secretary for Ireland, and he resigned in the course of the session, but was speedily replaced by another person. For a great part of the time there was not even an Irish Lord of the Treasury in the House, and an English minister had to undertake the conduct of Irish business.[o]

Subordinate ministers expected to obtain seats.

Frequent allusion was made during the session of 1861, to the aforesaid extraordinary and unprecedented deficiency of ministers for Ireland in the House of Commons, but no formal debate took place thereon, a forbearance which may be accounted for by the fact that with regard to subordinate members of an administration who have no seat in the Cabinet, the same constitutional

[l] Mirror of Parl. 1835, pp. 1029, 1030.

[m] Com. Journ. vol. xc. p. 284. Smith's Parlts. of Eng. vol. i. p. 79.

[n] Hans. Deb. vol. lxxxiv. pp. 754–758. See Lord Campbell's comments on this case, *ibid.* vol. clxxxix. p. 946.

[o] *Ibid.* vol. clxiv. pp. 197, 1851. The Attorney-General (Mr. Deasy) had a seat, but vacated it just before the session began, by accepting a seat on the Irish Bench (Com. Journ. vol. cxvi. p. 15). The solicitor-general (Mr. O'Hagan) was not in Parliament, but was nevertheless appointed attorney-general. He did not obtain a seat until May 1863, when he was returned for Tralee. Dod, Parl. Comp. 1864, p. 264.

necessity for their presence in Parliament does not exist, as in the case of the responsible advisers of the crown. Nevertheless, as a general rule, it is expected that all political servants of the crown should obtain seats in Parliament, in order that they may assist in carrying on the queen's Government. And it is customary for a ministry to cancel any such appointments when it is found that the original nominee is unable to obtain a seat in either House.[p]

Subordinate ministers out of Parliament

During Earl Grey's administration (1830-1834) Attorney-General Campbell, and a junior Lord of the Admiralty, were without seats in Parliament for a considerable time.[q] The Attorney-General is said to have been 'thrown out of a popular constituency by a cry which the Dissenters raised on some temporary matter.' He remained excluded for the greater part of the Session, but at last obtained a seat vacated by the Lord Advocate on his being promoted to the Scottish Bench.[r] But in England neither the Attorney-General nor the junior Lords of the Admiralty are ever admitted to the Cabinet.

In 1846, when Sir R. Peel was Prime Minister, it was noticed that 'three or four persons holding office under the crown and usually in Parliament,' were unable to get elected to the House of Commons. Upon which Sir R. Peel remarked as follows: 'I do not know any rule by which [persons] holding these offices should necessarily be members of this House. . . . I do not deny the inconvenience, but, having confidence in the approbation and support of Parliament upon the policy of government, I am content to forego that advantage which, in ordinary times, the crown possesses.'[s] Whereupon the subject was dropped without any further comment.

The second Derby administration, from its appointment in February 1858 until March 4, 1859, had no Scotch Lord of the Treasury, and the entire charge of Scottish business in the House of Commons devolved in the interim upon the Lord Advocate, which occasioned much dissatisfaction.[t]

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[p] Corresp. Will. IV. with Earl Grey, vol. i. p. 23.

[q] Mirror of Parl. 1834, p. 1435. Campbell's Chancellors, vol. iii. p. 452, *n.*

[r] Brougham, Brit. Constitution, p. 281. Sir J. Campbell vacated his seat for Dudley on being appointed attorney-general, on February 21, 1834. Losing his re-election, he was afterwards returned for Edinburgh, after a sharp contest, in place of Mr. Jeffery, ex-Lord Advocate, who vacated his seat on May 15, upon being appointed a Lord of Session. (Com. Journ. vol. lxxxix. pp. 60, 295; Smith's Parlts. vol. ii. p. 131; vol. iii. p. 134.) The Attorney-General took the oaths and his seat on June 5. Mirror of Parl. 1834, p. 2045.

[s] Hans. Deb. vol. lxxxiv. p. 228.

[t] *Ibid.* vol. cl. p. 2150. Com. Journ. vol. cxiv. p. 89.

Upon the accession to office of the Derby administration in July 1866, the office of Lord-Advocate of Scotland was conferred upon Mr. George Patton. This gentleman was unable to obtain a seat in the House of Commons; he therefore resigned, and Mr. Gordon was appointed in his stead. He likewise failed to obtain a seat during the entire period of the session of 1867.[u] Early in the following session, however, the Lord-Advocate was returned for the English borough of Thetford, one of the members for which resigned in order to make way for him.[v] But, meanwhile, the absence of this functionary from the House of Commons led to very great inconvenience and frequent complaints in the House, as the Lord-Advocate, although not a member of the Cabinet, is a very important functionary, and is chiefly responsible for the management of Scotch business in Parliament.[w] To some extent his place was supplied by the Scotch Lord of the Treasury, but the absence of the Lord-Advocate was admitted by the Government to be 'a great misfortune.'[x]

During the continuance of this embarrassing state of affairs, the Scotch business in the House was principally entrusted to the Scotch Lord of the Treasury, under the general oversight of the Home Secretary, and in communication, out of the House, with Mr. Patton himself. This inconvenient arrangement gave additional impetus to a feeling already existing in Scotland in favour of the appointment of an Under-Secretary of State in the Home Office, to whom should be allotted the political duties now attached to the office of Lord-Advocate. This project is at present under the consideration of the Government.[y] In one respect the proposed change would be undoubtedly advantageous, as, following the analogy in similar cases, the new Under-Secretaryship, with the sanction of Parliament, might be conferred upon a member of the House of Commons without vacating his seat. Already, as we shall have occasion hereafter to notice, Parliament has agreed to substitute an Under-Secretary in place of a Vice-President for the Board of Trade, for the express purpose of facilitating the representation of that important department in the House of Commons.

The increasing difficulty of finding seats for the subor-

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[u] When the ministry took office in July 1866, Mr. Patton was appointed Lord-Advocate, but on going for re-election was defeated. (Com. Journ. vol. cxxi. p. 441. Dod, Parl. Comp. 1868, p. 106.) He then resigned, and was replaced by Mr. E. S. Gordon, who was unable to get a seat until December 1867. Dod, p. 208.

[v] Hans. Deb. vol. cxc. p. 535.

[w] *Ibid.* vol. clxxxv. pp. 283, 461, 721; vol. clxxxvi. pp. 397, 408, 2023; vol. clxxxvii. p. 6; vol. clxxxviii. p. 167.

[x] *Ibid.* vol. clxxxviii. p. 167.

[y] *Ibid.* vol. clxxxvi. pp. 397, 408, 2023; vol. clxxxvii. p. 6.

dinate members of an administration, not to mention the Cabinet ministers, and the growing demand for an adequate representation in both Houses of every prominent executive department,[b] have given rise to several attempts to obtain some modification of the law requiring the vacation of the seat of a member of the House of Commons upon his accepting office, which will be noticed in another part of this chapter.[c]

Project to get seats for leading men out of the House.

Meanwhile, a proposition on this subject which was submitted to the House of Lords in 1861, and again in 1867, by Lord Stratheden and Campbell, may be briefly noticed. When a bill to appropriate four seats in the House of Commons, which had been vacated by the disfranchisement of the boroughs of Sudbury and St. Alban, was under consideration in 1861, his lordship moved that, in view of the number of leading men who, at different times since the Reform Act of 1832, had been excluded from the House from local circumstances, and against the wishes of the community at large, from the want of a corrective power in the state to supply the loss to both political parties of the old nomination boroughs, and replace in Parliament men of acknowledged eminence, whom the united body of the nation would have returned but who had failed to secure the suffrages of the particular sections before whom they had presented themselves at a general election—the bill in question should be referred to a select committee to devise some means of applying these surplus seats to the purpose above mentioned. Being opposed by Government the motion was withdrawn; but Lord Stratheden took occasion to embody the arguments in favour of his proposal in a protest against the third reading of the bill.[d] In 1867, upon the third reading of the new Reform Bill, his lordship moved the insertion of a clause to enable the House of Commons to assign seats

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[b] See *post*, p. 242.
[c] *Post*, p. 267.
[d] Hans. Deb. vol. clxiv. pp. 1716, 1844.

to four persons who might be accidentally excluded at a general election, and whose presence in Parliament would be serviceable to the country. But the Premier (Earl Derby) having declared that 'it would be a waste of words to enter upon any discussion of a scheme so utterly impracticable, and so entirely at variance with the principles of our representative system,' the clause was immediately negatived.[e]

Royal Household.

The administration is composed, for the most part, of officers of state whose duties are of a decidedly political character, but it also includes certain officers of the royal household who, from their intimate connection with the person of the sovereign, are supposed to possess peculiar facilities for influencing the royal mind; an influence which might be exercised to the detriment of the party in power if in the hands of their political opponents.[f] Officers of this class, if they sit in Parliament, are bound to support the existing ministry, but they are not invariably required to be members of the legislature.[g]

Political chiefs of public departments.

The principle on which the direction of the chief administrative departments is assigned to a political officer is, that there are great political questions involved in their management. This is especially true of the different branches of the secretariat, but it holds good, more or less, in respect to every office included in the administration. Sometimes, in the progress of departmental reforms, it becomes expedient to constitute an office, hitherto deemed to be political, into a permanent non-political one. This has occurred, since 1850, in regard to one or more of the junior Lords of the Admiralty, and in the case of the mastership of the Mint. A similar arrangement was recommended by a committee of the House of Commons in 1860, in reference to the Chief Commissioner of Works, on the ground that there is nothing political in his duties,

[e] Hans. Deb. vol. clxxxix. p. 944.

[f] As to appointments in the royal household, see *ante*, vol. i. p. 188.

[g] See *ante*, p. 236.

and that his office is merely a department for structural works to carry out undertakings that have been sanctioned by Parliament.[h] But if, under any circumstances, a public office is made permanent, and the holder thereof not liable to removal upon a change of ministry, it necessarily follows that he should cease to occupy a seat in Parliament; for it would be contrary to constitutional practice to permit any government officer to sit in the House of Commons who is not there in a representative capacity; and 'no administration would act with colleagues who were members of the House, unless they were willing to act as members of the same party.'[i]

Permanent officers excluded from House of Commons.

If it should be deemed advisable to increase the number of political offices by adding to the list of the responsible servants of the crown additional ministers, having charge of new departments of state, it is within the prerogative of the crown to effect the same. Within a very recent period two additional Secretaryships of State have been established, one in 1854 for War, and the other in 1858 for India. In 1847, under the authority of the Act 10 & 11 Vict. c. 109, the office of President of the Poor Law Commission was created. Again, in 1856, the office of Vice-President of the Committee of Council for Education was established, pursuant to the provisions of the Act 19 & 20 Vict. c. 116. It rests with the Government exclusively to determine whether any such changes are necessary in order to secure a greater efficiency in the public service; and they are effected by order or declaration of the Queen in Council, an Act of Parliament being required only in cases where it is necessary to make pecuniary provision for the duties to be undertaken by the new department;[j] or when it is proposed to au-

Creation of new political offices.

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[h] Report on Miscel. Expenditure, Commons' Papers, 1860; vol. ix. Evid. 1412, 1413; and see *post*, p. 482.

[i] Report Com. on Board of Admiralty, Commons' Papers, 1861; vol. v. p. 57; and see Hearn, Govt. of Eng. p. 250; also *post*, p. 258.

[j] See the discussions in the House of Commons in 1826 upon the proposal of ministers that separate and increased salaries should be allowed

thorise the new minister and his secretary to sit in the House of Commons.[k] Nevertheless, it is quite consistent with constitutional usage for the crown to receive advice in such a matter from either House of Parliament.

Additional political offices proposed.

Thus, on February 12, 1857, an address was passed by the House of Commons, praying that her majesty would be graciously pleased to take into her consideration, 'as an urgent measure of administrative reform, the formation of a separate and responsible department for the affairs of public justice.' The ministers acquiesced in this resolution; although, as yet, no steps have been taken to give effect to the recommendation.[l]

On April 6, 1841, the House of Commons was moved to address the crown 'to appoint a responsible Minister of Education;' but after a short debate the motion was withdrawn.[m] Again, on March 18, 1862, a motion was made in the House of Commons in favour of the appointment of a responsible minister, to take charge of, and represent in Parliament, the interests of education, science, and art combined. The government opposed this motion, alleging that it was unnecessary, inasmuch as these interests were already represented in the House of Commons, partly by the Vice-President of the Education Committee, and also by officers connected with the Treasury. It was stated, however, that the question would not be lost sight of by Government, who would take steps to improve the existing regulations in reference thereto as soon as possible; and that meanwhile it would be undesirable to fetter their proceedings by the adoption of an abstract proposition on the subject. The motion was accordingly withdrawn. In the session of 1868, ministers themselves brought in a Bill for the appointment of a Secretary of State, who should have the whole range of educational matters in the United Kingdom under his control and responsibility. Owing to political difficulties arising during this session, the Bill was withdrawn.[n]

On May 19, 1868, a motion was made in the House of Commons for the appointment of a select committee to enquire into and report upon the functions of various Government offices, so far as they affect questions relating to Agriculture, with a view to provide for the due consideration of such questions by one department, respon-

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to the offices of the President of the Board of Trade and Treasurer of the Navy, in order that those offices, heretofore held by one person, might be disjoined, with an adequate salary to each. Annual Register, 1826, pp. 108–113.

[k] See *post*, p. 257.

[l] See further on this subject, *post*, p. 703.

[m] Mirror of Parl. 1841, p. 1228.

[n] See *post*, pp. 647, 648.

sible to Parliament. Admitting the importance of the considerations urged by the mover, the Home Secretary declared that the question was beset with difficulties, owing to jealousies amongst conflicting local authorities, but that it was receiving departmental consideration. Whereupon the motion was withdrawn.[o]

All public departments to be represented in Parliament.

As the ministry for the time being are strictly and exclusively responsible for the government of the country, in all its various branches and details; and as they possess, on behalf of the crown, an absolute control over all the departments of state, so that every public officer in the kingdom is directly or indirectly subordinate to them;[p] it is right, and in accordance with constitutional practice, that there should be some minister of the crown specially answerable for each particular branch of the public service, and that every department of state should be adequately represented in Parliament.[q] This representation may either be direct, by the presence, in either House, of the political chief of the department, or of some political functionary connected with the same; or it may be indirect, through some other officer of government, who is specially charged with the duty of answering for the department in question, as its parliamentary representative.[r]

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[o] Hans. Deb. vol. cxcii. pp. 579–591. See also, in regard to attempts to obtain the appointment of a new Secretary of State, or Under-Secretary for Scotland, *post*, p. 374.

[p] See *ante*, vol. i. p. 388.

[q] Lord Stanley, Hans. Deb. vol. clxii. p. 1901. The peculiar advantages which result from the adoption of this principle, and the practical superiority of a system of government with changing parliamentary heads over that of an administration composed of permanent officials not liable to removal at the will of Parliament, are ably stated by Mr. Bagehot, in the Fortnightly Review, vol. vi pp. 513–537.

[r] The only exception to this rule is in the case of the British Museum. The parliamentary representative of this national institution, by whom the estimates for the same are annually moved in the House of Commons, is by long usage one of the trustees, who may happen to have a seat in that assembly. This officer is generally a man of eminence and public worth, but in fulfilling this service for the museum he voluntarily assumes a duty for which he is not directly reponsible to Parliament. This is an anomaly in our political system which, as a rule, attaches responsibility to those only who are empowered to regulate the details of government, and requires them to propound the measures for which they are themselves responsible. The irregularity in this instance is, however, more apparent than real, inasmuch as the estimates, though pre-

The advantages of such an arrangement in the working of Parliamentary Government, may be illustrated by the following examples:—

'When the Poor Law administration was not represented in the House of Commons a constant series of vexatious attacks were made on that department. But after it had a representative here, most of those attacks ceased;' and the business has ever since been carried on to the general satisfaction of the country.[s]

Ill effects of inadequate representation.

The Derby ministry in 1852 was confessedly weak in the composition of its Board of Admiralty. In his desire to secure the efficient administration of that great department of state, Lord Derby did not sufficiently consider the importance of obtaining a strong parliamentary element amongst the presiding officers. Only one of the junior naval lords had a seat in the House of Commons, and his professional rank was inferior to that of his colleagues at the Board. It therefore devolved upon the political secretary alone to be the medium of communicating to the board the prevalent opinions in the House of Commons upon naval questions. Consequently there failed to be that sympathy and good feeling between the Admiralty and the Commons which ought to subsist under parliamentary government. The board consisted of most able and efficient men, but from the lack of an adequate parliamentary element, they looked too exclusively upon what, in their opinion, the interests of the service required, and viewed with jealousy and suspicion any appeals that were made to them out of deference to the temper of the House of Commons. There was not, in fact, a spirit of harmony between this executive department and the popular chamber, and this was confessedly owing to the want of an adequate representation of the Board of Admiralty in the House of Commons.[t]

Another striking example of the ill effects attending the non-representation in parliament of leading executive departments, and of the inconveniences resulting from the administration of such departments being entrusted to subordinate and permanent officers, is afforded by a recent occurrence in connection with the Office of Woods and Forests. This office is presided over by two permanent

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pared in the first instance by the trustees of the museum, are submitted for the approval of the Treasury, before they are proposed to the House of Commons. See further on this point, *post*, p. 250.

[s] Sir Charles Wood, Hans. Deb. vol. clxi. p. 1266. Lord John Manners, *ibid.* vol. clxxi. p. 425. And see Mr. Bagehot's remarks on this example in Fortnightly Review, vol. vi. p. 520.

[t] Report, Select Committee on Dockyard Appointments, Commons Papers, 1852–1853, vol. xxv: Mr. Disraeli's evidence, p. 298, &c.; Lord Derby's evidence, p. 363.

commissioners, and is not directly represented in either branch of the legislature. From a debate which took place in the House of Commons in the early part of the year 1863, it was apparent that the policy pursued by the Office of Woods and Forests in regard to the forests of Epping and Hainault, had tended to encourage forestal enclosures, and to deprive the inhabitants of London of the use and enjoyment of these rural districts. The assistant commissioner in charge of this particular branch of administration (Mr. J. K. Howard) governed his proceedings by the principle that his office was one of revenue only, and that whatever expenses attended the management of the crown property ought to be strictly limited to the due conservation of the same. Finding that the maintenance of the forestal rights of the crown over such extensive tracts was a considerable source of expense, and losing sight of the immense advantages resulting from them, in the opportunities they afforded for healthful recreation to an enormous city population, he determined that the public should no longer be put to the cost of resisting encroachments on these lands. He therefore commenced negotiations for the sale of the rights of the crown over the remaining unenclosed lands in Epping Forest, a proceeding which had it been consummated would have closed the whole of that invaluable district from the public. This gave rise to an animated discussion in the House of Commons, from which it was evident that this action of the department was regarded as unpopular and unwise. Had the presiding commissioner been in the possession of a seat in that House, he would have been directly amenable to the influence of its enlightened opinions, and a debate in Parliament on the policy of the course he had pursued, would probably have convinced him of his error. In the absence of any representative of this department, the House was obliged to adopt a rough and imperfect method of attaining its object, namely, by an address to her majesty (which was carried against ministers), that directions might be given 'that no sales to facilitate enclosures be made of crown lands or crown forestal rights, within fifteen miles of the metropolis.' The crown was advised to give a favourable answer to this address.[u] But this had the effect of bringing matters to a dead lock.[v] Mr. J. K. Howard regarded the address as an implied vote of censure upon himself, and immediately caused all negotiations for the sale of the forestal rights of the crown, which were then pending, to be stopped. Later in the same session, however, the House of Commons appointed a select committee to investigate the whole subject, and the result of their

[u] Hans. Deb. vol. clxix. pp. 318, 723.

[v] Mr. Cowper, Commissioner of Public Works, *ibid.* vol. clxxi. p. 420.

enquiries was a recommendation that the enclosure of Epping Forest should be partially resumed; while, at the same time, an adequate portion thereof should be set apart for the public use and benefit.[w] Nevertheless, Mr. Howard persisted in carrying out the terms of the address, and not considering himself at liberty to sell, he determined to refrain from all proceedings to prevent further encroachments, or to maintain the forestal rights of the crown.

Accordingly, in 1865, another select committee was appointed by the House of Commons, on Open spaces in and around the metropolis. This committee agreed with the House in the opinion that the Office of Woods and Forests ought not to have aimed so exclusively at making money out of these forestal rights, which had been originally obtained by the crown not for mere revenue purposes, but for the recreation of the chase, and that it ought rather to have endeavoured to make those rights contribute to the recreation of the people according to modern customs, by preserving the forestal character of at least a portion of the open spaces at Epping and Waltham. They therefore recommended that no further enclosures of royal forests, commons, &c., should take place within the metropolitan area. Mr. J. K. Howard, the assistant-commissioner, appeared before this committee, and attempted a justification of his conduct in stopping all sales, and abstaining from all legal proceedings to abate enclosures and encroachments on the rights of the crown. In their report, the committee refrained from animadverting upon Mr. Howard's proceedings; although, in a draft report which was proposed, but not agreed to, there was a paragraph regretting 'the narrow and technical view taken of their duty by the officers of Her Majesty's Woods and Forests.' But they expressed their disapproval of the action of the Government in this matter, and advised that immediate steps should be taken to vindicate the crown's forestal rights over the lands in question, and to abate enclosures therein. They also recommended that a new board should be appointed to act as trustees for the preservation, on behalf of the public, of the forests, &c., around the metropolis.[x] Pursuant to this report, the Government introduced a Bill, in the following session, to transfer the supervision of the forestal rights of the crown in Epping Forest to the Office of Works.[y] This not being a revenue department, but one charged with the care of property held in trust for public uses, the Government would feel at liberty to

[w] Report, Com. on Royal Forests, Commons Papers, 1863, vol. vi. pp. 552, 565-569, 582.

[x] Second Report, Com. on Open Spaces, Commons Papers, 1865, vol. viii. pp. 364, 385, 492-502. See also Commons Papers, 1866, vol. lx. p. 477.

[y] The bill was passed as a General Act, 29 & 30 Vict. c. 62, 'to amend the Law relating to the Woods, Forests, and Land Revenues of the Crown.' The sixth clause contains the provision in regard to Epping Forest.

ask for any necessary appropriation to carry out the wishes of Parliament in regard to the forest.[z] The Office of Works, moreover, would no longer tolerate any encroachments upon the rights of the public upon the plea that it would cost money to enforce redress.[a] The history of this case, both as regards the hasty and inconsistent interference of the House of Commons to remedy the effects of a narrow-minded policy on the part of the Board of Woods and Forests, and the equally ill-advised proceedings of the board itself upon the occasion, shows the importance of bringing every public department into direct communication with Parliament, in order that it may be administered in harmony with the most enlightened opinions, and for the benefit of the whole community.[b]

Commissions.

In addition to the great administrative boards which form part of the executive government of the empire, Parliament has sanctioned the appointment, from time to time, of various minor boards, or commissions, to whom particular branches of administration have been assigned which require special knowledge in the persons entrusted with their guardianship. These commissions are usually appointed by the crown during pleasure. But after their utility has been tested by experience, they are generally clothed by Parliament with additional powers, and made permanent.

As a general rule, all statutory commissioners who are paid for their services are expressly declared to be ineligible to sit in the House of Commons,[c] although a direct enactment to this effect is unnecessary, because all 'new offices' of profit disqualify the incumbents thereof under the statute of Anne.[d] This disqualification would not, of course, apply to an unpaid commissioner. Temporary commissions, moreover, appointed by the crown to investigate a particular matter, do not disqualify, and

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[z] Chanc. of Exchequer in Hans. Deb. vol. clxxxii. p. 958.

[a] See an article on this case in Fraser's Magazine for May 1866, which was afterwards republished by the author, H. W. Cole, Q.C. Longmans, June 1866.

[b] See also the Duke of Argyll's complaint in the House of Lords in regard to the Office of Woods and Forests, Hans. Deb. vol. cxcii. p. 1816.

[c] See Chambers, Dictionary of Elections, p. 212.

[d] 6 Anne, c. 7, sec. 25. See *post*, p. 261.

[e] See *post*, p. 260.

it has not been uncommon to appoint members of the House of Commons to serve thereon.

Their representation in Parliament.

Since the revival of the Reform question in 1852, the true principles of parliamentary representation have become better understood, and great and increasing value is now attached to the representation, in both Houses of Parliament, of prominent and important commissions appointed by the crown, or by statute, whether for instituting enquiries into special subjects, with a view to future legislation thereon, or for the direct fulfilment of certain public trusts. Whenever a commission includes one or more members of either House, satisfactory information can be afforded in reply to questions as to the conduct and progress of a particular investigation,[f] and, in the case of a statutory commission, the legislature are enabled to satisfy themselves that the commissioners are discharging their duty in accordance with the trust which the legislature has confided to them.[g] Moreover, after the presentation of their report, if the conclusions of the commissioners are impugned, the actual presence of one of their number in Parliament would be most serviceable, in explaining or justifying their conduct, instead of leaving their defence to be undertaken, at second hand, by a minister of the crown.[h]

With regard to permanent commissions, which are charged with administrative functions, peculiar necessity exists for their distinct and efficient representation in Parliament. Being held in direct subordination to some political head, and limited to certain prescribed duties, it has not been usual to consider such commissioners as

[f] See Hans. Deb. vol. cxc. p. 1457, 1796; *ibid.* vol. cxcii. pp. 1838, 1850; and see *post*, p. 342.

[g] Mr. Walpole's Evid. before Sel. Com. on the Ecclesiastical Commission, Commons Papers, 1863, vol. vi. p. 192; Hans. Deb. vol. clxxxv. p. 190; *ibid.* vol. clxxxvii. p. 93.

[h] Mr. Disraeli, Hans. Deb. vol. clxxxvii. p. 1941. And see *ibid.* vol. clxxxviii. pp. 282, 435; and particularly Mr. Russell Gurney's defence of the Boundary Commission, in 1868, after the Government and the House of Commons had refused to carry out its recommendations. *Ibid.* vol. cxcii. pp. 271, 1417.

holding political appointments. Persons are placed on permanent as well as on temporary commissions without reference to their political opinions, and if in Parliament are not removed upon a change of ministry.[i] But so far as members of the House of Commons are concerned, it is evident that by constitutional analogy this exemption from liability to removal from office, must be restricted to unpaid commissioners; and that a salaried member of a permanent commission, being in the service of the crown, should only retain his office, in connection with a seat in the House of Commons, so long as he is a supporter of the existing administration.[j]

Church Estates Commission.

As yet, the first Church Estates Commissioner, who is appointed under a statute passed in 1850, affords the only example of a statutory paid commissioner (not being a minister of the crown) to whom has been granted the privilege of a seat in the House of Commons.[k] No advantage, however, has been taken of this permission, but this Commission was represented in the House of Commons, from 1856 to 1858, by the third commissioner, who, though a salaried officer, is not appointed by the crown, and since 1859, by the second commissioner, who receives no salary. From August 1859 to November 1865 this office was filled by Mr. Bouverie, an unofficial supporter of the Government; it has since been held in conjunction with some ministerial office.[l]

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[i] See *post*, p. 350.

[j] This point, however, has only been decided inferentially and not directly. For the proofs that may be urged on behalf of the position taken in the text, see *post*, p. 258; and note the practice in the case of the Second Church Estates Commissioner, who, though not paid and therefore not removable, is invariably replaced, as a parliamentary representative of the commission, on a change of ministry.

[k] See further concerning this office, *post*, p. 263. The office of 'First Church Estates Commissioner' is not considered to be, in itself, a political, but a permanent office. (See Hans. Deb. vol. clxxxviii. p. 1475.) It is only in view of the holder thereof sitting in the House of Commons and representing the commission therein, that it can be placed in the category of political offices.

[l] Namely, from November 1865 to August 1866, by Mr. H. A. Bruce, vice-president of the Education Committee, and upon the accession of the Derby ministry by Mr. J. R. Mowbray, judge-advocate-general.

Ecclesiastical Commission.

In 1863, a committee of the House of Commons appointed to enquire into the present state of the Ecclesiastical Commission and into the expediency of reforming its administration of the ecclesiastical property and revenues, recommended that the management of Church property and the distribution of surplus Church revenues should be assigned to separate corporations; and that the former should be vested in a board to consist of two paid commissioners, who should be ineligible for Parliament. But that there should also be one unpaid commissioner on the board with a seat in the House of Commons for the purpose of representing the commission in that chamber.[m] Nothing has yet been done to give effect to this recommendation.

Charity Commission.

The Charity Commission is another permanent board, regulated by Act of Parliament, and entrusted with administrative and quasi-judicial functions, of very considerable importance.[n] This board is at present represented in the House of Commons by the Vice-President of the Education Committee, who is an unpaid commissioner. In view of a further extension of the powers of the Charity Commission, it was recommended by the Schools Inquiry Commission, in 1868, that in addition to its ministerial representative there should be added to it 'a member of Parliament, who would be able to explain in his place the reasons for every scheme that was proposed, to show its relations to other schemes, and, in the absence of a minister, to answer any questions that might be asked' in regard to the operations of the board.[o] The debate in the House of Commons on March 25, 1868, upon Tancred's Charity Bill, a measure originally recommended by the commission, but which had been materially altered by a select committee, and was finally rejected by the House, 'showed the necessity that existed for some efficient representative of the Charity Commissioners in that House.'[p]

Parliamentary representation of every important public trust.

It is probable that, ere long, both the Ecclesiastical and the Charity Commissioners will have their acknowledged representatives in the House of Commons; and should there be, hereafter, any other trusts of sufficient public importance to require a mouthpiece in Parliament, the precedent established in the case of the Church Estates Commission will doubtless be followed, and liberty given to some officer connected therewith to sit in the House of Commons. For it is most desirable that that chamber should open its doors to receive accredited and competent representatives from every

[m] Commons Papers, 1863, vol. vi. pp. 46, 192.

[n] See *post*, pp. 659-662.

[o] Report, vol. i. p. 634.

[p] Mr. Thomson Hankey, Hans. Deb. vol. cxci. p. 232.

prominent and influential public interest. Nevertheless, the strict rule of parliamentary government will undoubtedly require that none but supporters of the existing administration should act as the parliamentary representatives of permanent commissions appointed by the crown; and that however limited may be the scope of his official duties, every member of such a commission, having a seat in the House of Commons, who is charged with the representation thereof in Parliament, should resign his office upon a change of ministry.

British Museum.

The only exception to this general rule is in the case of the British Museum. From an early period, this great national institution has been represented in the House of Commons by one of the elected trustees, without any reference to his political opinions. But this is confessedly an anomalous practice, and is only retained on account of certain peculiar advantages attending it, which have rendered it expedient to overlook its manifest infringement of the established principles of parliamentary government. From the repeated objections which have been urged in the House, to the continuance of this practice, it will probably ere long be replaced by some other arrangement more in accordance with constitutional usage.[q]

Representation should be in both Houses.

The representation in Parliament of every prominent department of state should not be confined to one chamber merely, but should always, whenever it is practicable, include both Houses. This is most desirable: firstly, because of the respect due to each separate and independent branch of the legislature; secondly, in order to promote harmony between the executive and legislative bodies; and lastly, because it tends materially to facilitate the despatch of public business through Parliament. When the representative of any particular branch of the public service in one House is the chief minister in charge of the same, having a seat in the Cabinet, the department should be represented in the other House by an under-

[q] See *ante*, vol. i. p. 482, *n.*; vol. ii. p. 242, *n.*

secretary, vice-president, or other subordinate officer, as the case may be.[r]

Proportion of Cabinet ministers in each House.

The proportion of Cabinet ministers to be assigned to either House of Parliament necessarily varies according to circumstances. It is impossible to fix any rule in regard to a matter which must depend altogether upon the strength of parties, and the amount of available talent at the disposal of an existing administration. The prime minister is responsible for the distribution of the chief offices of government between the two Houses of Parliament. But this is not infrequently a very difficult task. As a leading principle it may be stated that every department entrusted with the expenditure of public money should be represented in the House of Commons either by its head, or by its political secretary.[s] Moreover, the increasing weight and influence to which the House of Commons has attained, in public affairs, has rendered it advisable that a larger proportion of cabinet ministers should have seats in that chamber. Under-secretaries of State, however able, are not in a position to declare or defend the policy of government, with the freedom, intelligence, and responsibility that is needful, in order to satisfy the demands of the House of Commons. In fact, they merely hold a brief, and are required to justify a policy in the framing of which they have had no share.[t]

It is curious to observe the change in constitutional practice within the present century, in the relative proportion of Cabinet ministers in the two chambers; a change which is a striking indication of the growth of power on the part of the lower House. The first Cabinet of George III. (in 1760) consisted of fourteen persons, thirteen of whom were peers, and but one a member of

[r] Rep. Com. on Education, Commons Papers, 1865, vol. vi. Earl Granville's Evid. 1883, 2317. Complaints were made in the House of Lords, in the session of 1865, that there was no official connected with the Poor Law Department who had a seat in that House, whilst both the president and secretary of the board, as also the secretary and under-secretary of state for the Home Department, sat in the House of Commons. Hans. Deb. vol. clxxviii. pp. 5, 193.

[s] Mr. Cowper, Hans. Deb. vol. clxxii. p. 364.

[t] See *post*, p. 369.

the House of Commons. At the commencement of Mr. Pitt's first administration, in 1783, he was the sole Cabinet minister in the House of Commons.[u] Mr. Addington's Cabinet, in 1801, consisted of nine persons, five of whom were peers, and the remainder commoners.[v] When Mr. Pitt returned to office, in 1804, his Cabinet consisted of twelve persons, of whom but one besides himself (that is Lord Castlereagh) was a member of the House of Commons.[w] This objectionable arrangement arose from the impossibility of inducing the king to agree to Pitt's proposal for the formation of the ministry on a more extended basis. The want of proper assistance in the House was a severe strain on Mr. Pitt's powers, and in the following year his enfeebled health compelled him to reopen the question to the king, but his majesty continued inexorable. Pitt never again appeared in Parliament. Within a few months from this interview with the king he was no more.[x] After the death of Mr. Pitt, the Grenville ministry (known as 'All the Talents') was formed, which consisted of eleven members, of whom seven were peers and four members of the House of Commons.[y] Mr. Perceval's Cabinet, in 1809, consisted of ten members, of whom six were peers, and four were commoners. Lord Liverpool's Cabinet, in 1812, consisted of twelve members, of whom ten were peers, and two only were commoners; but in 1814, the relative strength of the government, in the two Houses, was altered, by certain ministerial changes, which gave nine Cabinet ministers to the upper House and four to the lower. In 1818, there were fourteen Cabinet ministers, of whom eight were peers, and six were commoners. In 1822 (Lord Liverpool being still premier), the Cabinet was composed of fifteen members, nine of whom were peers.[z] Since the Reform Bill, it has been customary to apportion the leading members of government more equally between the two Houses.

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[u] See *ante*, vol. i. p. 78.
[v] Stanhope's Pitt, vol. iii. p. 322.
[w] *Ibid.* vol. iv. p. 189.
[x] *Ibid.* pp. 333, 386.
[y] Parl. Deb. vol. vi. p. xii.
[z] Sir G. C. Lewis, in Edinb. Rev. vol. cix. pp. 157 *n.* 177, 186, 198.

Upon the formation of Lord Palmerston's second administration, in 1859, the Cabinet consisted of fifteen members, of whom five were peers, and ten sat in the House of Commons. But through various casualties, which occasioned changes in the *personnel* of the government, it happened that from 1863 to 1865, eight of the Cabinet offices were held by peers, and but seven by members of the House of Commons. The heads of four principal departments of state, viz., the War Office, the Foreign Office, the Colonial Office, and the Admiralty, were all of them peers, and these important departments were represented in the House of Commons by under-secretaries.[a] This apportionment of ministerial offices between the two Houses led to much inconvenience and dissatisfaction; and advantage was taken of the retirement of the Duke of Newcastle from the Colonial Office, in 1864, to confer the seals of this department upon Mr. Cardwell, a member of the House of Commons. But still the preponderance of Cabinet ministers in the upper House remained the same; for Mr. Cardwell had previously held a seat in the Cabinet as Chancellor of the Duchy of Lancaster, which office was conferred upon a peer, the Earl of Clarendon.

Preponderance of ministers in the Lords.

On April 18, 1864, Mr. Disraeli took occasion—in a general way, and without assuming to lay down any inflexible rule upon the subject—to point out the grave objections which existed to the continuance of such an arrangement. He gave it as his opinion that the following ministers ought to find seats in the House of Commons, viz.:—the heads of 'the two great departments of the public expenditure,' i.e. the Army and Navy, a decided majority of the Secretaries of State, and on the whole, the 'great majority' of administrative officers. He showed that the constitution has practically provided for the adequate representation of the Government in the House of Lords by allowing but four out of the five Secretaries

Ministers who ought to be in the Commons.

[a] Hans. Deb. vol. clxx. pp. 467, 1960; vol. clxxi. p. 1824.

of State to sit in the Commons, and by requiring the Lord Chancellor, the Lord President of the Council, and the Lord Privy Seal to be chosen from amongst the peers. The Postmaster-General, moreover, was prohibited under the statute of Anne from sitting in the House of Commons,[b] and the chief offices of the household are always held by peers, and occasionally (as in the case of Lord Wellesley) by eminent statesmen. The prime minister, although he may be selected from either House indifferently, has in the majority of cases since the Reform Bill been a member of the House of Peers. In reply to Mr. Disraeli's observations, Lord Palmerston did not attempt to dispute the general doctrine enunciated, in regard to the distribution of Cabinet offices between the two Houses, but showed that it was attributable to unforeseen and unavoidable circumstances that the proportion of Cabinet ministers allowed to each House upon the first formation of his ministry (viz. five to the Lords and ten to the Commons) had been altered, and the existing arrangements necessitated.[c]

Later practice on this head.

Upon the formation of the Derby administration in 1866, seven Cabinet ministers were assigned to the Lords and eight to the Commons. The Secretaries of State for the Home, Foreign, and War Departments, and for India, all sat in the House of Commons, as well as the Chancellor of the Exchequer, the First Lord of the Admiralty, and the Presidents of the Boards of Trade and of the

[b] But this disability has been since removed by the Act 29 & 30 Vict. ch. 55.

[c] Hans. Deb. vol. clxxiv. pp. 1219, 1232. *Ibid.* vol. clxxv. p. 596. On June 19, 1865, the subject was again discussed in the House of Commons, upon a motion by Mr. Darby Griffith to resolve 'that in the opinion of this House it would be convenient, under present circumstances, that the Secretary of State for War should be a member of the House of Commons.' The motion was opposed by Lord Palmerston, who showed that the present apportionment of ministerial offices between the two Houses had been occasioned by unavoidable circumstances, that it in no way affected the principle of ministerial responsibility, and that the adoption of the motion would introduce an entirely novel principle, and would embarrass the action of those charged from time to time with forming a new Government. Whereupon the motion was negatived, without a division.—*Ibid.* vol. clxxx. p. 457.

Poor Laws. While in the House of Lords the following Cabinet ministers had seats, viz.:—The Premier himself as First Lord of the Treasury, the Lord Chancellor, the Secretary for the Colonies, the President of the Council, the Lord Privy Seal, the Chancellor of the Duchy of Lancaster, and the Postmaster-General. This distribution of offices was in strict accordance with the principles advocated by Mr. Disraeli in 1864, when leader of the Opposition. Unexpected vicissitudes led, in the following year, to some change in this arrangement, by which the chiefs of the Boards of Trade and of the Poor Laws were chosen from the House of Lords; and their departments were respectively represented in the House of Commons by subordinate ministers. But no public inconvenience was occasioned by this proceeding.[d]

Advantages to a minister of a seat in the Lords.

Admitting, however, the obvious inconveniences attending the representation of a prominent public department in the House of Commons by an officer of inferior grade, who has no seat in the Cabinet, whilst his political chief is in the House of Lords, it has been well said that there is another side to the question, and that there is considerable practical advantage, in an administrative point of view, when you have a man at the head of an important department who has his evenings disengaged, and who is not overburdened by the enormous labour of regular attendance in the House of Commons.[e] This should be allowed to counterbalance, in some degree, the disadvantages resulting from an undue proportion of principal ministers in the upper chamber, when, as will sometimes happen, such an adjustment of ministerial offices becomes a political necessity.

It has been already remarked,[f] that in order to facilitate the representation of every prominent branch of the public service in the two Houses of Parliament, under

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[d] Hans. Deb. vol. clxxxvii. p. 877.

[e] Report, Com. on Education, Commons Papers, 1865, vol. vi. Evid. 760.

[f] *Ante*, p. 251.

Representation by under-secretaries of state.

secretaries of state are permitted to act as auxiliaries to the chiefs of their respective departments, in the discharge of this important duty. Officers of this description are not made ineligible for a seat in the House by the 25th section of the statute of Anne (6 Anne, c. 7), inasmuch as their offices are not 'new,' and therefore do not disqualify;[g] they are not appointed directly by the crown, and therefore do not come within the scope of the 26th section of that Act, requiring the vacation of the seat upon the first appointment to a non-disqualifying office. Moreover, the Act 15 George II. c. 22, sec. 3, which was framed for the purpose of excluding therefrom all 'deputies or clerks' in the principal departments of state, contains a proviso that this Act shall not be construed so as to prevent the Secretaries of the Treasury, of the Chancellor of the Exchequer, and of the Admiralty, or the Under-Secretaries to the Principal Secretaries of State, from sitting and voting in the House of Commons. Owing to the form of appointment, any one of these offices may be conferred upon a member of the House of Commons without vacating his seat. For an Under-Secretary is not appointed by the crown, but both in form and in substance, by a Secretary of State, a First Lord of the Treasury, or other minister in a corresponding position. He, therefore, in a technical sense, does not hold office under or from the crown, and does not come within the operation of that clause in the statute of Anne, which vacates the seats of all persons who shall accept of office of profit from the crown—that is to say, an office conferred by a minister in the distribution of crown patronage.[h] Otherwise there is no real distinction between these and other political offices, either in their character, or in the tenure by which they are held.[i] But it is a matter of public convenience, and of considerable advantage to every administration, that they should be able to

[g] See 2 Hatsell, pp. 51 (Mr. Corbet's case), 61 *n.* Mr. E. Walpole's case.

[h] Attorney-General, Hans. Deb. vol. clxxiv. p. 1237.

[i] Earl Grey, *ibid.* vol. clxxxix. p. 742.

ensure the presence in the House of Commons of confidential officers empowered to represent therein leading departments of state, and who in the absence of ministers specially charged with and responsible for the same, may be entrusted with the conduct of public business in relation thereto.

In 1867, Parliament consented to abolish the office of Vice-President of the Board of Trade, and to substitute a parliamentary secretary in lieu thereof, for the express purpose of getting rid of an office which necessitated the re-election of any member upon whom it might be conferred, and replacing it by an office which, by analogy with corresponding situations of a similar grade, should not entail any such obligation.[j]

A limited number only may sit in the House of Commons together.

But inasmuch as the law allows but four out of the five principal Secretaries of State to sit in the House of Commons at any one time, so it has been decided that a similar number only of Under-Secretaries may sit therein together.[k]

During the interval between April 28, 1863, and April 18, 1864, it happened, through inadvertence, that five Under-Secretaries continued to sit and vote as members of the House of Commons. On the last-named day, the attention of the House was directed to this circumstance by Mr. Disraeli, and it was resolved, that the provisions of the statute applicable thereto had been violated. Whereupon a committee was appointed to enquire, 'whether the Under-Secretary who had been last appointed to that office had thereby vacated his seat.' The committee reported their opinion that, inasmuch as the prohibitory enactment was couched in general terms, and did not specify any particular officer as being disqualified to sit in Parliament; and as it did not positively declare the seat, under such circumstances, to be void, but merely forbad an additional Under-Secretary to 'sit and vote,' the seat of the last appointed Under-Secretary was not vacated. Nevertheless, it was deemed advisable to pass an Act of Indemnity, to absolve the parties concerned from the penal consequences of this oversight.

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[j] *Ibid.* vol. clxxxvii. p. 475; Stat. 30 & 31 Vict. c. 72. And by the Act 10 & 11 Vict. c. 109, sec. 9, one of the two Secretaries of the Poor Law Board is permitted to sit in the House of Commons.

[k] See 2 Hatsell, 64 *n.*; Acts 18 & 19 Vict. c. 10; 21 & 22 Vict. c. 106, sec. 4.

And the Government remedied their mistake by conferring the fifth under-secretaryship upon a member of the House of Lords.[1]

From the proceedings taken in the foregoing case, we learn that—while every facility is afforded to the efficient working of parliamentary government by the permission which is given to the political chiefs and their immediate subordinates, in every public department, holding office upon a similar tenure, to sit in the House of Commons—the House is extremely jealous of the introduction of any other civil servants of the crown within its precincts. The same statute that sanctions the presence in the House of certain under-secretaries, expressly declares all other 'deputies or clerks,' in the offices therein named, to be incapable of being elected, or of sitting and voting in that assembly.[m] And even when there is no direct statutable disqualification, constitutional practice requires that a member of the House of Commons who accepts a permanent and non-political office under government, shall vacate his seat in Parliament.[n]

Why permanent civil officers are excluded from the House.

There are sound constitutional reasons for the exclusion of all non-political servants of the crown (excepting of course officers in the army or navy, who are exempted from disqualification by the 28th section of the Statute of Anne[o]) from the House of Commons. Strictly subordinate, and accountable for their conduct, to the minister of state who is charged with the oversight of the department to which they belong—and who is exclusively re-

[1] Hans. Deb. vol. clxxiv. pp. 1218, 1756; Act 27 & 28 Vict. c. 21. Until of late years, it has been very unusual for a peer to hold the subordinate office of Under-Secretary of State. (See Corresp. Will. IV. with Earl Grey, vol. ii. pp. 340, 344.) But it has occurred several times in recent administrations, and is likely to become a common practice, as a larger number of cabinet ministers are absorbed by the House of Commons. It affords, moreover, an admirable training for higher official work.

[m] 15 Geo. II. c. 22.

[n] Case of Mr. Phinn, Hans. Deb. vol. cxxxviii. p. 1187. And see *ante*, p. 240; and vol. i. p. 377.

[o] An exception which constructively includes several descriptions of military appointments. (See May, Parl. Pract. ed. 1863, p. 591.) Mere promotion does not disqualify; but a commission given to a civilian avoids the seat, except in certain cases expressly exempted by law. See Rogers, Elections, pp. 205–207.

sponsible to Parliament for the administration of the same[p] —the presence, in either House, of a permanent officer of any branch of the public service—who might possibly differ in politics with his responsible chief—would be found highly inconvenient, and might lead to unseemly and injurious collisions.[q]

Besides the injury to free deliberation in Parliament from the presence therein of persons who would be exposed to peculiar hindrances in the discharge of their legislative duties, their ineligibility serves to increase their efficiency as departmental officers. A reputation for impartiality, honesty of purpose, high sense of duty, and fidelity to their political chief for the time being, is, we are assured, eminently characteristic of the whole body of public servants in Great Britain. It is their possession of these qualities that begets a just confidence on the part of a minister of state in the subordinate officers upon whom he must greatly depend.[r] And nothing could be more adverse to the continuance of such esteem than to permit an officer to occupy a position where a conscientious expression of his opinions might bring him into collision with the government of the day, or with political opponents, or partisans on either side.[s]

Law of eligibility for House of Commons.

We must now direct our attention to the terms of the existing law affecting the eligibility of persons holding office under the crown to sit in the House of Commons.

We have already reviewed the circumstances under which Parliament, after many unsuccessful efforts, succeeded, in the reign of Queen Anne, in limiting the number of office-holders who should be capable of sitting in the House of Commons; and finally, by subsequent legislation, in ridding the House of all placemen who are not required, either directly or indirectly, to assist in

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[p] See *ante*, p. 174.

[q] Mr. Gladstone, Hans. Deb. vol. clxxxii. p. 1862. And see *post*, p. 613.

[r] See *ante*, p. 175.

[s] See Mirror of Parl. 1839, pp. 3939, 3942; Hans. Deb. vol. cli. pp. 788, 1583.

carrying on the Queen's Government, or whose presence cannot be justified upon grounds of public policy.[t]

The Statute of Anne,[u] it will be remembered, established two important principles, which have remained substantially unchanged to this day. Firstly, that the acceptance by a member of the House of Commons of an office of profit from the crown, shall thereby vacate his seat. Secondly, that such person may, nevertheless, be re-elected, provided his office be one that is not declared expressly (by this or any other statute) to be incompatible with a seat in the House of Commons.

Ministers accepting office must be re-elected.

In regard to the first of these principles, it should be observed that this statute is invariably construed very strictly.

Thus, the acceptance of an office from the crown, accompanied by a formal renunciation of any salary, fee, or emolument in connection therewith, does not disqualify.[v]

The disqualification, however, attaches immediately upon *accepting* 'an office of profit' under the statute.[w] So that the subsequent resignation of such an office (before the meeting of Parliament), and the refusal to accept of any salary until the question of disqualification arising out of the same shall have been determined, will not save the seat.[x]

But where the remuneration is by fees and not by salary, and the disqualifying office was relinquished before the performance of any duties, or the receipt of any fees —though held for a period of three months—it was not considered to vacate the seat.[y]

Moreover, it has not been the practice to consider the casual employment of members of the House of Commons upon royal commissions, or on special services, &c.— which are not regular 'offices,' and to which no stated

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[t] See *ante*, p. 91.

[u] 6 Anne, c. 7, secs. 25, 26.

[v] Mr. Bathurst's case, May, Parl. Prac. ed. 1863, p. 593.

[w] As to what constitutes a disqualifying acceptance, see *post*, p. 278.

[x] Case of Mr. D. W. Harvey, Mirror of Parl. 1839, pp. 81, 275.

[y] Case of Mr. Pryme, *ibid.* 1833, pp. 3779-3785.

salary is attached—as coming within the disqualifying operation of the statute; even when remuneration is received for such services.

The second principle which was initiated by the Statute of Anne, and ratified and extended by subsequent legislation, provides for the positive exclusion from the House of Commons of all placemen not required therein. By the 25th section of the Statute of Anne this exclusion was directly applied to the incumbents of all 'new offices' to be created after October 25, 1705, as well as to certain other offices therein enumerated. There remained, however, a numerous class of officials, holding 'old offices' under the crown, who were still eligible to be elected to Parliament. But their exclusion was gradually effected by various statutes subsequently passed.[a] So that, as a general rule, no government office-holders are now competent to sit in the House of Commons but such as have a representative character in connection with a particular branch of the public service. It is true that there are certain dignified and non-political offices to which the principle of exclusion has not yet been applied, and which it is contended ought not, on public grounds, to disqualify for a seat in that assembly. But these privileged exceptions are the mere relics of a byegone age, are very few in number, and are being gradually abolished. In proof of these statements it will be necessary to take a brief survey of the actual results of parliamentary action upon this subject, since the Statute of Anne.

Exclusion of all unnecessary officials.

The 'twelve' judges of England, though holding offices which were in existence long anterior to the Statute of Anne, and not expressly disqualified by any act of Parliament, are excluded from the House of Commons by ancient usage, on account of their receiving

Judges.

[a] Mirr. of Parl. 1840, pp. 4541–4550. And see Campbell's Chancellors, vol. v. p. 183 *n.*; Mr. Cobden's case, Hans. Deb. vol. clviii. p. 690; and Mr. Gladstone's case, in 1858, *ante*, vol. i. p. 380 *note* (y); and Commons Papers, 1859, sess. 2, vol. xv. p. 576.

[a] For these statutes and the decisions upon them, see Rogers, Law of Elections, ed. 1859, pp. 192–207.

writs of summons to attend the House of Lords.[b] Since Queen Anne's reign, other judicial functionaries have been rendered ineligible by statutes passed from time to time.[c] For example, the Scotch judges, by the Act 7 Geo. II. c. 16; the Irish judges, by 1 & 2 Geo. IV. c. 44; and the judge of the Admiralty Court in Ireland, by the Act 30 & 31 Vict. c. 114, sec. 9.[d] The judge of the High Court of Admiralty was disqualified in 1840 by the Act 3 & 4 Vict. c. 66.[e] But as the then judge of this court (Dr. Lushington) was a member of the House at the time of the passing of this Act, the words 'after the present Parliament' were inserted in the clause of disqualification, on the ground that inasmuch as he had been 'chosen by his constituents while holding his judicial office,' it would be 'quite beyond the jurisdiction' of Parliament to require him to vacate his seat.[f]

Upon the establishment of County Courts in England, the judges thereof were excluded from the House of Commons by the Acts 9 & 10 Vict. c. 95 and 25 & 26 Vict. c. 99.

Recorders. The recorders of the several boroughs in England and Wales are not disqualified from sitting in the House of Commons; but they are prohibited from representing the boroughs for which they act as recorders;[g] and upon their appointment to a recordership in the gift of the crown, they must invariably present themselves for re-election, if they desire to remain in Parliament.[h]

[b] Mirror of Parl. 1839, p. 4588. And see *ante*, p. 77.

[c] Rogers, Law of Elec. ed. 1859, pp. 186–187. See an article in the Law Magazine for August, 1868. Can a person holding a judicial office sit in the House of Commons?

[d] Up to the passing of this Act, in 1867, the judge of this court was eligible to be elected. Commons Papers, 1864, vol. xxix. p. 232.

[e] See Mirror of Parl. 1839, p. 161. But see Hans. Deb. vol. cxxvii. p. 1008.

[f] Mirror of Parl. 1839, p. 4587. The learned judge remained in the House of Commons, of which he had been a distinguished ornament, for thirty-four years, until the dissolution of Parliament in 1841. He continued to preside over the Admiralty Court until 1867!

[g] Act 5 & 6 Will. IV. c. 76, sec. 103. In like manner, a revising barrister may not sit in the House of Commons for any county or borough for which he is appointed to act, by 6 & 7 Vict. c. 18, sec. 28

[h] Com. Journ. 1861, p. 156.

The recorders of London and Dublin, however, are eligible to sit in the House of Commons for any constituency. For the London recorder is not a crown appointment, but is elected by the Court of Aldermen, and the Dublin recorder is also (it is presumed) chosen in a similar manner.[i] Judicial officers still eligible.

The judges of the Ecclesiastical Court and the Master of the Rolls are likewise still at liberty to hold seats in the House of Commons.[j]

The last occasion upon which the Master of the Rolls sat in the House of Commons was in 1851, when Sir John Romilly was re-elected after his appointment to that office. At the general election in 1852 Sir J. Romilly was a defeated candidate, and he did not again enter the House of Commons. In 1853 a bill was brought into that House, the chief object of which was to render the Master of the Rolls incapable of sitting therein. But, on the motion for its third reading, an amendment was moved by Mr. Henry Drummond, to give it the six months' hoist, and being supported in an able and eloquent speech by Mr. Macaulay, the amendment was carried on a division.[k] So that this eminent legal functionary continues to be eligible to a seat in the House of Commons.[l]

There is but one other person holding an office of profit under or from the crown (not being a recognised minister of the crown), who may now sit in the House of Commons, namely, the First Church Estates Commissioner.[m] This functionary is a lay member of the Church of England, appointed by the crown during pleasure, in whom is vested all estates held in trust for the Ecclesiastical Commissioners of England, he being *ex-officio* one of the said commissioners. The Act 13 & 14 Vict. c. 94 authorises the appointment by the crown of First and Second Church Estates Commissioners, and assigns a Church Estates Commissioners.

[i] Pol. Cyclop. vol. iv. p. 614; Mirror of Parl. 1831-2, pp. 3331, 3496; *Ibid.* 1839, pp. 3938, 4591.

[j] Mirror of Parl. 1839, p. 4588; Hans. Deb. vol. clix. p. 1765. See a letter of Mr. Canning to Lord Liverpool in 1826, pointing out the important services heretofore rendered by the Master of the Rolls to the administration in Parliament. Stapleton, Canning and his Times, p. 611.

[k] Hans. Deb. vol. cxxvii. p. 993.

[l] See *ibid.* vol. clxxxviii. p. 1475.

[m] See Return relating to Offices of Profit, Commons Papers, 1867, No. 138.

salary of 1,200*l.* per annum to the former, but no salary to the latter. It also empowers the Archbishop of Canterbury to appoint an additional commissioner, who shall receive a salary of 1000*l.* per annum. But ever since the passing of the Act, the office of 'first commissioner' has been held by a peer (the Earl of Chichester). The second and third commissioners have been usually selected from amongst the members of the House of Commons, as the acceptance of these offices entails no disability.[n] The second commissioner is, in fact, competent to sit, because, though appointed by the crown, he receives no salary. The third commissioner because, though a salaried officer, he is appointed by the Archbishop of Canterbury. In the event of the office of First commissioner being hereafter conferred upon a member of the House of Commons, he would be required, under the 26th section of the Statute of 6 Anne, c. 7, to vacate his seat upon receiving the appointment, although by the third section of the Act 13 & 14 Vict. aforesaid, he is declared capable of being elected, and of sitting and voting in the House.[o] The office of Church Estates Commissioner is not necessarily accounted to be political, although it enables the incumbent to represent in Parliament an important public trust; thereby affording the first example of the introduction of a new element into the House of Commons, namely, the direct representation therein of minor administrative boards, and royal commissions.[p]

The tendency of opinion in Parliament since the Reform Act of 1832, has been to adhere with augmented

[n] The Second Church Estates Commissioner has been a member of the House of Commons since 1859, and invariably either a member or a supporter of the existing administration. See *ante*, p. 248. The third commissionership has been held in succession by Mr. W. Deedes, the Right Hon. Spencer Walpole, and Mr. E. Howes, all of whom sat in the House of Commons. *Vide* Annual Reports of the Commissioners, and Dod. Parl. Comp. 1856–1868.

[o] In illustration of this distinction, see the Act 14 & 15 Vict. c. 42, sec. 20.

[p] See *ante*, p. 248.

severity, to the principle of exclusion embodied in the Statute of Anne, by reducing the number of office-holders under the crown, who shall be capable of sitting in the House of Commons, and by extruding all such as are not directly serviceable in a representative capacity. We accordingly find that the number of offices of profit from the crown which might have been held at any one time by members of the House of Commons has been steadily decreasing, through the abolition of various unnecessary offices, and the consolidation of others with kindred departments.[q]

Exclusion of all officials but such as represent a public trust.

Moreover, within the past ten years, the principle of exclusion has been still further extended, by its application to certain offices, newly created under tenure of 'good behaviour,' and by bringing it to bear upon the House of Lords. Thus, in the Government of India Act of 1858, it was provided that the members of the council to advise and assist the Governor-General, though appointed for life, during 'good behaviour,' should not be capable of sitting or voting in either House of Parliament.[r] And in 1866, in the Act empowering the crown to appoint a Comptroller and Auditor-General, and an Assistant-Comptroller and Auditor, notwithstanding that these officers were likewise to serve during 'good behaviour,' a tenure which renders them practically independent of ministerial control; they were declared to be ineligible for a seat in the House of Commons, and it was further enacted that no Peer of Parliament should be capable of holding either of the said offices.[s] In like manner it is provided in the Parliamentary Elections Act of 1868, concerning the puisne judges to be charged with the trial of Election Petitions, that while their

Officials during 'good behaviour' excluded from both Houses.

[q] See *ante*, p. 92.

[r] 21 & 22 Vict. c. 106, sec 12. And see Hans. Deb. vol. cli. pp. 784-790, 1582; *Ibid.* vol. clxxxvii. p. 1048.

[s] 29 & 30 Vict. c. 39, sec. 3. The previous Comptroller of the Exchequer (Lord Monteagle), whose office was identical with that of the new Comptroller and Auditor-General, was a member of the House of Peers. But see Hans. Deb. vol. clxxxii. p. 1862.

tenure is similar to that of other judges, which excludes them from the House of Commons, no judge being "a member of the House of Lords" shall be appointed an election judge.[t]

Standing counsel to departments of state.

In 1867 a case of considerable interest occurred, affecting the position of persons holding the office of standing counsel to any of the departments of state. These functionaries are not in the same category with ordinary public officers, it being merely their duty to advise upon legal questions. The appointment is necessarily conferred upon a barrister of high professional standing, and gentlemen of this class often aspire to a seat in Parliament. The standing counsel to the Board of Admiralty (who is in receipt of a salary of 500*l.* per annum) has sat in the House of Commons for many years, retaining his office under successive administrations. His seat was not affected thereby under the Statute of Anne, because, technically speaking, the office was not accounted to be 'new,' and because he was appointed by the Board of Admiralty and not by the crown.[u] So also it had been customary for the standing counsel to the Board of Control for India to sit in the House without question.[v] In 1858, when the Board of Control was abolished, and a Secretary of State for India appointed, the then standing counsel for the Board (Mr. Wigram) was a member of the House, and continued to sit therein without complaint. But in 1866, in the case of Mr. Forsyth, who then filled this office, and who had been returned as member for the borough of Cambridge, it was decided by an election committee that, by the combined operation of the Statute of Anne and of that of 1858, transferring the dominion of India to the crown, the office of standing counsel to the Secretary of State for India became a 'new office' within the meaning of the Statute of Anne, and its in-

[t] 31 & 32 Vict. c. 125, sec. 11. And see the first draft of the Bill, No. 27, 1868.

[u] In like manner there is an officer, styled the Judge Advocate of the Fleet, who is appointed under the Naval Discipline Act (29 & 30 Vict. c. 109, sec. 61), 'by the Admiralty.' This office is not accounted political, and was lately given to J. W. Huddleston, Q.C., M.P. for Canterbury. *Law Times*, March 9, 1867, p. 359.

[v] Hans. Deb. vol. clxxxv. p. 1204. It must have been assumed that the counsel for these departments held offices that were not accounted 'new' by the Statute of Anne. For, in regard to any 'new' office under that statute, the acceptance thereof disqualifies for a seat in the House, and, in the case of a member, forfeits his seat, whether it be in the gift of the crown itself, or is part of the private patronage of a minister of the crown. (See Harvey's case, in 1839, Rogers' Law of Elections, ed. 1859, p. 196; Mirror of Parl. 1839, pp. 81, 275, 432.) Whilst the mere vacation of the seat, on being appointed to a non-disqualifying office, only takes place when a member accepts an appointment directly 'from the crown;' that is to say, from a minister distributing the crown patronage. Rogers' Law of Elec. p. 194. Hats. Prec. vol. ii. p. 51, *n.*

cumbent thereby precluded from sitting in the House of Commons. Whereupon the seat of Mr. Forsyth was declared void, and a new writ was issued in April, 1866.[w] But an Act of Indemnity was passed (receiving three readings in the House of Commons in one day), to relieve Mr. Forsyth from the legal penalties he had unwittingly incurred, by continuing to sit in the House after the reconstruction of his office.[x] In the following session a bill was introduced into the House of Commons to do away with this accidental and anomalous disqualification, by enacting that the said office shall not be deemed one to render its incumbent ineligible for a seat in the House. Upon the motion for its second reading, this bill met with great opposition, as being an attempt to 'prejudice the principle of a large and important public statute, resting on public policy, by taking a particular case out of it, without any sound reasons applicable to that more than to other cases.'[y] It was accordingly withdrawn, with an understanding that a select committee should be appointed, to consider the question of revising the disqualifications arising out of the Statute of Anne 'on broader and more general grounds.'[z] But this has not yet been done.

Re-election on accepting ministerial offices, considered.

While there is a decided disposition in Parliament to insist with increasing emphasis upon the incompatibility of a seat in the House of Commons with the acceptance of a non-political office under the crown, there has been, on the other hand, ever since the introduction of the first Reform Act of 1832, a growing conviction in the minds of statesmen, wholly irrespective of party considerations, that the clause in the Statute of Anne, obliging members who accept ministerial offices under government to go to their constituents for re-election, required some modification in order to adapt it to the exigencies of our modern political system.[a] Originally introduced as a means of protecting the House of Commons from the undue

[w] The House was informed by a member of this committee, that 'an accidental circumstance' attending the reconstruction of the India Office under a Secretary of State, 'alone tended to make Mr. Forsyth's office *a new one* under the Act of Anne.' Hans. Deb. vol. clxxxv. p. 1335.

[x] Act 29 Vict. c. 20; Hans. Deb. vol. clxxxii. p. 1763.

[y] Sir Roundell Palmer, *ibid.* vol. clxxxv. p. 1334.

[z] *Ibid.* pp. 1203, 1326–1335.

[a] See the Right Hon. Mr. Cave's remarks on the bill passed in 1867 (and noticed *ante*, p. 257), to convert the office of Vice-President of the Board of Trade into an Under-Secretaryship, expressly to avoid the obligation of re-election upon accepting office. Hans. Deb. vol. clxxxvii. p. 476.

influence of the crown, it has ceased to be of any value in this respect, and has frequently operated most injuriously to the public interests by limiting the choice of persons to form part of a ministry to those who were secure of re-election upon their acceptance of office. Whatever advantages may accrue from the continued enforcement of this provision, as amended by the Reform Act of 1867, must be sought for, as will be presently shown, in an entirely opposite direction.

Re-appointments do not vacate.

It should, however, be remarked, that the re-appointment of a minister of the crown to an office which he had resigned, either upon a change of ministry or otherwise—but to which no one else had been appointed in the interim—has never been accounted 'a new appointment' under the statute, so as to vacate the seat; inasmuch as ministerial offices are not avoided by a mere resignation thereof, but only upon the appointment of a successor.[b]

Proposed repeal of the law requiring ministers to be re-elected.

When the Reform Bill of 1832 was under discussion in the House of Lords, it was proposed by the Marquess of Northampton to insert a clause therein to render it unnecessary for members of the House of Commons to vacate their seats upon the acceptance of political offices. Earl Grey (the prime minister) stated that he was favourably inclined to the proposition, as it appeared to him that great inconveniences resulted from the present practice, which more than counterbalanced any advantages attached to it. But it was judged to be imprudent to risk giving additional strength to the opponents of the Reform Bill by attempting to introduce into it an amendment so liable to be misunderstood.[c] Accordingly, Lord Northampton brought in a separate bill for the purpose. The Duke of Wellington, who then led the Opposition in the House of Lords, declared his opinion that some such

[b] See 2 Hats. Prec. pp. 45 *n.* 394. And the case of the Chief Secretary for Ireland, reappointed by a different Lord-Lieutenant. *Ibid.* p. 65 *n.*; Stat. 54 Geo. III. c. 16.

[c] Mirror of Parl. 1831–2, p. 2382; Grey, Parl. Gov. ed. 1864, p. 125; Hans. Deb. vol. clxxxix. p. 740.

measure would be necessary in consequence of the passing of the Reform Bill, but he conceived that it ought to originate with the Government. The other peers who took part in the debate, though generally favourable to the bill, required more time to consider it: it was therefore postponed and ultimately dropped.[d]

In 1834 a similar motion was proposed by a private member in the House of Commons, but it met with little favour. An amendment was moved to substitute a plan for members of government to be allowed seats in the House *ex-officio*, but without the privilege of voting, unless returned by a constituency.[e] This proposal proved still more unacceptable to the House, and, after a speech from the Chancellor of the Exchequer (Lord Althorp), in which he said that the undoubted inconvenience occasioned by the present law was not sufficient to justify 'a valuable privilege of the people' being taken away, although hereafter it might be so increased as to render it necessary to adopt such a proposition, the motion and amendment were both withdrawn.[f]

Ex-officio seats.

Several years elapsed before this question was again mooted in Parliament. But upon the revival of the agitation for reform, by Lord John Russell in 1852, this knotty point once more presented itself for solution. Coupled with a wider extension of the suffrage, it was probable that the facilities then afforded for the introduction of the queen's ministers into the House of Commons would be materially diminished by any new measure of reform. This consideration gave additional weight to the arguments in favour of a change in the existing law. Wherefore, Lord John Russell, in the new Reform Bill submitted to the House of Commons just before the break-up of his ministry in 1852, made an attempt to obtain its modification. Warned by the fate of previous efforts in

[d] Mirror of Parl. 1831–2, pp. 2569, 2808.

[e] The grave objections to such an arrangement have been noticed in a former chapter, see *ante*, vol. i. p. 26.

[f] Mirror of Parl. 1834, pp. 1431–1436.

Proposal that the seat should not be vacated by a change of office.

this direction, he contented himself with proposing that a member of the House who, at the time of his election, held an office under government, should not be required to go for re-election upon a mere change of office. This was intended to meet the argument so often urged against the larger proposition, that a constituency having chosen a free and independent man as their representative, had a right to an opportunity of re-considering their choice when he undertook the trammels and responsibilities of public employ. Adverting to this, Lord John Russell said, 'It appears to me, that the electors having once had an opportunity of deciding when their representative accepted an office under the crown, he should not again be called upon to appear before them on changing his office.'[g] But the bill did not pass, so that the law concerning the vacation of seats remained unaltered.

That re-election should be dispensed with.

In 1854, Lord John Russell, as the mouthpiece of Lord Aberdeen's Coalition Ministry, introduced another Reform Bill, which contained a clause to do away with the necessity for re-election, in the first instance, upon a member of the House of Commons accepting office as a minister of the crown. In advocating this provision, his lordship commented upon the inconvenience and embarrassment occasioned by the existing law; argued that the particular constituency rarely considered the question involved in the acceptance of office by their representative, but often opposed his return upon totally different grounds; and pointed out that the true responsibility of a member accepting a share in the government lay to the House

[g] Hans. Deb. vol. cxix. p. 267. A bill to prevent the necessity for vacating a seat in the Commons upon a mere change of office, was brought in by a Mr. Wrightson in 1855. (*Ibid.* vol. cxxxvii. p. 532.) It appeared to excite but little interest, and, after a very short debate, was rejected on the second reading by a small majority. (*Ibid.* pp. 1279-1281.) In 1858, Mr. Wrightson again moved for leave to bring in a bill to this effect, but the motion was negatived on division without any discussion. (*Ibid.* vol. cxlviii. p. 1544.) He renewed his application in 1859 (at the beginning of a new parliament), but with a similar result. (*Ibid.* vol. cliv. p. 704.) It is evident that the House was not prepared to entertain any such proposition when mooted by a private member.

itself and not to his own constituents, while he was confessedly at liberty to change his course of politics without reference to his constituents, until he sought a renewal of trust at their hands.[h] But this bill did not pass.

In 1859 a Reform Bill was submitted to the House of Commons by Mr. Disraeli, as the organ of the Earl of Derby's administration, which contained a clause (No. 68) to dispense with the necessity for re-election in the case of a member who had been elected when holding an office of profit under the crown, upon his again accepting any office of profit (not being a disqualifying one) 'while he continues to be such member.'[i] This, it will be observed, was a peculiar provision, differing from any previous attempt to amend the Statute of Anne. It was not commented upon, or discussed, in the House, during the debates on the bill, which was thrown out upon its second reading.

That a second re-election should not be required.

In 1860, Lord John Russell, on behalf of Lord Palmerston's administration, again introduced a Reform Bill. His speech on this occasion contained no direct reference to the point we are now considering, although it dwelt upon the service rendered to the constitution by small boroughs in facilitating the introduction of ministers of the crown into Parliament.[j] But by the 30th clause of the bill it was proposed to enact—in the terms of Mr. Disraeli's bill of the preceding year—that it should not be necessary for a member who had been elected whilst holding an office under the crown, to go for re-election upon his accepting another office, 'while he continues such member;' provided only, that any subsequent acceptance of office shall be 'upon or immediately before his resignation of the office' previously held by him.[k] After much debate, this bill was withdrawn without any discussion having ensued upon this particular clause. The

In the event of a continuous holding of office.

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[h] Hans. Deb. vol. cxxx. p. 508, and see p. 530.

[i] Commons Papers, 1859, 1st sess. vol. ii. p. 678.

[j] Hans. Deb. vol. clvi. p. 2058.

[k] *Ibid.* vol. clvii. App. p. vi.

Reform question was then allowed to slumber for several years.

At length in 1866, after the death of Lord Palmerston, the attention of the House of Commons was again aroused to the state of the representation, and a Reform Bill was laid upon the table by Mr. Gladstone, as the organ of Earl Russell's ministry. Strange to say, this bill contained no clause concerning the vacation of seats on accepting office; an omission which, considering that Lord Russell had repeatedly advocated some change in the law on this subject, can only be attributed to an unwillingness on the part of Mr. Gladstone to re-open the question.[1] But this bill also shared the fate of its predecessors.

Up then to the year 1867, the principle embodied in the Statute of Anne, requiring a member to submit his acceptance of an office under the crown, upon every occasion and under all circumstances, to the approval of his constituents, was resolutely and persistently maintained by the legislature;[m] notwithstanding that some modification thereof, more or less extensive, had been proposed by successive administrations, and advocated by political writers of ability and repute for upwards of thirty years.[n]

Different proposals in 1867.

In 1867, however, it once more devolved upon Mr. Disraeli, as the organ of Earl Derby's administration, to submit to parliament a bill to amend the laws relating to the representation of the people, which, after undergoing protracted discussion in the House of Commons, was finally agreed to by both Houses. As originally introduced, the 37th clause of this bill was an exact transcript

[1] This surmise is corroborated by Mr. Gladstone's remarks upon this question in the following session. *Ibid.* vol. clxxxv. p. 471.

[m] May, Const. Hist. vol. i. p. 308.

[n] For example: Earl Grey on Parl. Gov. new ed. 1864, pp. 125, 239; Hearn, Gov. of Eng. p. 252; Brief Remarks upon the Working of the Reform Bill, as it affects One of the Royal Prerogatives (a pamphlet), printed by Gilbert and Rivington, London, 1831; Edinburgh Review, vol. lxi. p. 40; vol. xcvi. p. 500; vol. cvi. p. 282; by Mr. W. R. Greg in North British Review for May, 1852, No. 1. On the other side, see Toulmin Smith, Parl. Remembrancer, 1857–8, p. 24; Quarterly Review, vol. xciv. p. 602; Warren, Election Law, edit. 1857, p. 189.

of the 68th clause of Mr. Disraeli's Reform Bill of 1859.[o] But objection being taken in committee that this clause might be so construed that 'a defeated government could again take office without re-election,' whereas it was the sense of the House that 'it should be clearly limited to changes in the existing government after the members had been once re-elected,' the Government consented to withdraw the clause and substitute another to that effect.[p] Upon the introduction of the new clause, it was agreed to without a division, Mr. Gladstone expressing his approval of the alteration of the law as being the removal of a very serious inconvenience, which more than outweighed the small constitutional privilege hitherto enforced against a member of the House of Commons whenever he might accept an office from the Crown.[q]

In the House of Lords, in committee on the bill, an attempt was made, by Earl Grey, to substitute for the clause above-mentioned another which, instead of merely permitting members to exchange one office for another without vacating their seats, should render re-election unnecessary whensoever a member of Parliament should accept of any office now tenable by law with a seat in the House of Commons. His lordship argued that this 'useless check' should be removed, because of the increasing difficulty of ensuring the re-election of persons selected by the crown as the most suitable to fill the great offices of state; and because it was highly desirable that such persons should not be dependent for their seats on the caprice of particular electoral bodies. A further reason for the proposed change was predicated upon the introduction into this bill of the novel principle of the representation of minorities, by the clause enacting that at a contested election for any county or borough represented by three members, no person shall vote for more than two candidates. It was urged that a member elected

[o] Representation of the People Bill, 1867, Bill 79.

[p] Hans. Deb. vol. clxxxviii. p. 302.

[q] *Ibid.* pp. 301, 614-616.

by the minority in one of these constituencies, would almost inevitably lose his seat if required to present himself for re-election, on account of his acceptance of office from the crown.[r]

Earl Grey's amendment was opposed by the Earl of Derby, on the ground that, however convenient such an arrangement might be to a government, it would be an invasion of the constitutional rights of the electors to declare that a person whom they had chosen whilst in an independent position, and free to devote the whole of his time and attention to his duties on their behalf, but who had afterwards accepted an office which must require a great portion of his time, and also to a certain extent must cripple his independent judgment, should not have to go before his constituents, in order to know whether, in these altered circumstances, they were willing to continue him as their representative. It was further contended that it was not only essential that the government as a body should possess the confidence of the House of Commons, but also that every member of the administration should enjoy, in his own person, and as a component part of the executive, the full and perfect confidence of the constituency which had returned him to Parliament. These arguments prevailed with the House, and Earl Grey's amendment was negatived, without a division.[s]

Ultimate change in the law,

The clause as finally agreed to by Parliament is as follows:—'Whereas it is expedient to amend the law relating to offices of profit, the acceptance of which from the crown vacates the seats of members accepting the same, but does not render them incapable of being re-elected: Be it enacted, that where a person has been returned as a member to serve in Parliament since the acceptance by him from the crown of any office described in Schedule H to this Act annexed, the subsequent ac-

[r] *Ibid.* vol. clxxxix. p. 740.

[s] *Ibid.* pp. 744–747.

ceptance by him from the crown of any other office or offices described in such schedule, in lieu of and in immediate succession the one to the other, shall not vacate his seat.' [t]

dispensing with a second re-election, upon a change of office.

This new enactment would seem to be a reasonable settlement of this long-contested point. It preserves to every constituency, that has returned a member to Parliament untrammelled by the fetters of office, an opportunity of re-considering their choice, upon their representative agreeing to assume such a responsibility; and it is, to this extent, a check upon members who might be disposed to ignore the conditions upon which they had been elected to serve in Parliament by a particular constituency. On the other hand, it enables a member, whose acceptance of office 'from the crown' has been ratified by the suffrages of the electors, to change from one such office to another without the personal trouble and inconvenience to public business, which would result from his having again to offer himself for re-election: provided only that the change be immediate, and that the office subsequently accepted, as well as that which has been relinquished, be an office actually designated in the schedule.[u]

The offices of profit referred to in the Act are thus enumerated in Schedule H:—

Lord High Treasurer.
Commissioner for executing the Offices of Treasurer of the Exchequer of Great Britain and Lord High Treasurer of Ireland.
President of the Privy Council.
Vice-President of the Committee of Council for Education.
Comptroller of Her Majesty's Household.
Treasurer of Her Majesty's Household.
Vice-Chamberlain of Her Majesty's Household.

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[t] 30 & 31 Vict. c. 102, sec. 52.

[u] See Hans. Deb. vol. clxxxviii. p. 1475

Equerry or Groom in Waiting on Her Majesty.
Any Principal Secretary of State.
Chancellor and Under-Treasurer of Her Majesty's Exchequer.
Paymaster-General.
Postmaster-General.
Lord High Admiral.
Commissioner for executing the office of Lord High Admiral.
Commissioner of Her Majesty's Works and Public Buildings.
President of the Committee of Privy Council for Trade and Plantations.
Chief Secretary for Ireland.
Commissioner for administering the Laws for the Relief of the Poor in England.
Chancellor of the Duchy of Lancaster.
Judge-Advocate-General.
Attorney-General for England.
Solicitor-General for England.
Lord Advocate for Scotland.
Solicitor-General for Scotland.
Attorney-General for Ireland.
Solicitor-General for Ireland.

The foregoing list is nearly identical with that given in the previous chapter, wherein is enumerated the officers of which an administration is usually composed.[v] But it omits certain subordinate functionaries, attached to the royal household,—such as captains of the gentlemen-at-arms and of the yeomen-of-the-guard,—who are occasionally appointed from the benches of the House of Commons. These gentlemen necessarily vacate their seats on receiving their appointments, but are not invariably required to seek for re-election. And it makes no mention of the political under-secretaries, who, as we have previously explained, do not vacate their seats on

[v] See *ante*, p. 162.

receiving their appointments;[w] but are still obliged to do so if promoted to a higher ministerial office.[x] Law in Canada.

In Canada, where, as a general rule, the English parliamentary practice prevails, the law concerning the vacation of seats on accepting office has been modified in a similar direction ever since 1853. First, by the statute 16 Vict. c. 154, and afterwards by the amended statute 20 Vict. c. 22, sec. 7, it was provided, that if a member of the legislative assembly, or an elected member of the legislative council, who holds any of the (enumerated) offices forming part of the provincial administration, 'resigns his office, and within one month after his resignation accepts any other of the said offices, he shall not thereby vacate his seat in the said assembly or council.'

In Australia.

It is worthy of notice, as indicative of colonial opinion upon this subject, that the constitution which was established in South Australia, upon the introduction of 'responsible government' in 1855, expressly permitted a member of either House (both chambers being then elective), to accept a political office in the ministry without being required to go for re-election.'[y] Herein South Australia differed from her sister colonies of New South Wales, Victoria, and Tasmania.[z] It is, in fact, the only colony with a constitution framed after the English model, wherein the experiment has been tried of dispensing with the vacation of the seat of a member accepting a ministerial office. Avowedly introduced in order to save the country from the cost and excitement entailed by frequent elections, and to facilitate a speedy re-adjustment of offices upon a change of ministry, the experiment has failed; and by removing an obvious impediment to frequent ministerial changes, it has fostered the element of instability, which is one of the most serious evils incident to parliamentary government. During the first nine years of responsible government in South Australia, there were no less than fifteen separate ministries, besides occasional modifications in the *personnel* of existing Cabinets: a result to which the facilities of change, afforded by the regulation in question, must have largely

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[w] *Ante*, p. 256.

[x] Case of Mr. Hunt, Secretary to the Treasury, whose seat was vacated on Feb. 28, 1868, by his acceptance of the office of Chancellor of the Exchequer.

[y] Local Ordinance, No. 2, of 1855–6, passed under the authority of the Imp. Act, 13 & 14 Vict. c. 59.

[z] See Commons Papers, 1862, vol. xxxvii. pp. 166–170.

contributed.[a] In the session of 1865-6 the South Australian ministers submitted to the Local Parliament a bill to amend the Constitution, which contained a provision to abolish this objectionable innovation, and to oblige members accepting any ministerial office to go to their constituents for re-election.[b] The introduction of such a clause betokens a change of opinion on the part of colonial statesmen, and a desire to revert to ancient constitutional practice in this particular. But the bill was thrown out on its second reading. The clause in question was much opposed, principally on the ground that, as the duration of the legislature was limited to three years, further ministerial elections were undesirable.[c] No further attempt has been made to amend the constitution in this direction, and as the existing law is now said to be working 'smoothly and well,' it is unlikely that any change will be made.[d]

What constitutes an acceptance of office.

Having ascertained the circumstances under which a member of the House of Commons is required, by law, to vacate his seat, upon accepting office under the crown, we have next to enquire, what constitutes an acceptance of office sufficient to justify the issue of a new writ?

Ordinarily, and as a matter of convenience, mere agreement to accept a disqualifying office vacates the seat.[e] But such agreement should be distinctly stated, as the ground of vacancy; and, at any rate, in offering himself for re-election the candidate must appear before his constituents as an actual office-holder under the crown, in order to legalise his new election after accepting the particular office.

In 1801 Mr. Addington, being at the time a member of the House of Commons, received the king's commands to form a new administration, in which it was intended that he should fill the post of Chancellor of the Exchequer. The arrangements for the new ministry were in progress, when they were interrupted by the king's illness. Believing that the delay would be short, Mr. Addington thought to expedite matters by accepting the Chiltern Hundreds. Thereupon, on February 19, a new writ was ordered. Mr. Addington had fully anticipated that his appointment as Chancellor of the Exchequer would have taken place before his re-election.

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[a] Forster, South Australia, pp. 160, 181.

[b] *Ibid.* p. 208, 209.

[c] South Australian Parliamentary Debates, January 9, 1866.

[d] Private letter from Colonial Under-Secretary of South Australia, dated June 18, 1868.

[e] See Hats. Prec. vol. ii. p. 61 *n.*

But this was prevented by the continued illness of the king; and he was again returned, and took his seat in the House on February 27, not as a minister of the crown, but as a private member. It was not until March 14 that the king was sufficiently recovered to admit of his receiving the seals from Mr. Pitt, and transferring them to Mr. Addington. This formal acceptance of office by Mr. Addington again vacated his seat; and it was March 23 before he re-appeared in the House as a minister of the crown.[f] This double election would have been avoided had Mr. Addington been able to vacate his seat in the first instance, on the ground of his having 'agreed to accept' the office of Chancellor of the Exchequer.[g] Technically, this would have been quite justifiable, but whether the probable formation of the new administration was likely to be affected by the state of the king's health, we are unable to determine.

In 1864 Mr. Bruce accepted the office of Vice-President of the Committee of Council on Education, a post which can only be held by a Privy Councillor. Upon the motion for the issue of a new writ, it was objected that Mr. Bruce had not yet been sworn in as a member of the Privy Council. Secretary Sir George Grey replied, that in several similar cases persons appointed had not been sworn in as Privy Councillors until after the issue of the writ, and the re-election of the member. The motion for the writ was withdrawn at the moment, but again moved later in the evening, and agreed to, without further remark.[h] Complaint having been made of this proceeding at the next sitting, the Attorney-General stated that it had been repeatedly decided, 'that a vacancy under the Act of 6 Anne, c. 7 attached on the earliest proof of the acceptance, whether by letter, word of mouth, the kissing of hands, or in any other manner, however informal; and that it was not necessary to wait for the complete appointment, but that then the writ might be issued, and the election take place; and if afterwards the appointment were completed by warrant, letters patent, or in any other form, no new vacancy was thereby created, because such appointment was merely the sequel to the acceptance of the offer of office which had occasioned the original vacancy.' . . . Therefore 'the House need be under no alarm for having issued the writ; on the contrary, it would have been a departure from law not to have issued it.'[i]

[f] May, Const. Hist. vol. i. pp. 164, 165.

[g] See Mr. Rose's case in 1804, cited in 2 Hats. p. 45 *n.*

[h] Hans. Deb. vol. clxxiv. p. 1197; Commons Journ. vol. cxix. p. 174.

[i] Hans. Deb. vol. clxxiv. pp. 1288, 1289. 'It is the period of the acceptance of office, and not the period at which the patent is made out, to which the law is applicable.' On this principle, Mr. Wynn was declared not to have vacated his seat for Montgomeryshire, though he had received a patent re-appointing him to an office he had held for years, but which was annulled by the demise of the crown, which patent was dated subsequently

When the issue of a new writ may be delayed.

But while it is customary to issue a new writ so soon as a member has agreed to accept a disqualifying office, mere agreement does not of itself disqualify.[i] It is true, that by agreeing to accept an office from the crown, a member places himself under the influence against which the Statute of Anne is directed. Nevertheless, if there be a reasonable excuse to justify delay, it has been usual for the House to await the performance of some formal act of acceptance, before proceeding to order the issue of a new writ. Meanwhile, the member is not debarred from the exercise of any of his legislative functions.

For example: In the session of 1822 Mr. Canning spoke and voted in the House of Commons repeatedly after he had agreed to accept the post of Governor-General of India; and even referred in one of his earliest speeches to his intended departure, which was to take place after the close of the session. But after all the office was not conferred upon him; for when on his way to Liverpool to take leave of his constituents, he received intelligence which led to his remaining in England.[j]

In 1840 Mr. Horsman, M.P. for Cockermouth, issued an address to his electors, dated the 18th May, informing them that he had been offered the post of a Junior Lord of the Treasury, and had felt it to be his 'duty to accept it;' adding, that after the debate on a certain bill then under discussion, he would present himself for re-election. It was not until May 21 that a new writ was ordered for Cockermouth, Mr. Horsman having, meanwhile, spoken and voted in the House. Next day the attention of the House was called to these facts, and the above-mentioned address read from a newspaper. But though undisputed, no proceedings could be taken upon mere newspaper authority, and the Government declined to state at what precise time Mr. Horsman had accepted office. So the matter was allowed to drop.[k]

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to his election, his acceptance having been previous thereto. Commons Journ. 1839, pp. 58, 71; Mirror of Parl. 1839, p. 433.

[i] Lord Nugent's case, Mirror of Parl. 1831–2, pp. 3331, 3350. A mere agreement to accept the Chiltern Hundreds will not suffice, but 'before the motion for a new writ could be made, certain forms must be gone through.' (Hans. Deb. vol. lxxxiii. p. 453; *ibid.* vol. cxxxviii. p. 1188.) But when a member applied in general terms for the Chiltern Hundreds by letter, through a friend, and then left England, a new writ was ordered, the technical objection being overruled. Mirror of Parl. 1838, p. 4391.

[j] Parl. Deb. N. S. vol. vii. p. 136. *Ibid.* Index, *verbo* Canning, G. Bell, Life of Canning, pp. 319–322. Edinb. Review, vol. cix. p. 269.

[k] Mirror of Parl. 1840, pp. 3243, 3265, 3308.

Upon the formation of Sir R. Peel's administration in September 1841, the office of Lord Chancellor of Ireland was assigned to Sir E. B. Sugden. On September 20 the question was asked in the House of Commons, why no new writ had been moved for upon this nomination, to which Sir E. B. Sugden replied, 'it is quite true that I have considered it my duty to accept the appointment; but those measures have not as yet been completed which are necessary to displace the former officers.' Sir R. Peel confirmed this statement, saying, 'it is intended the appointment should be made, but the ceremony even of kissing hands has not yet taken place.'[1] Later in the evening, a member having remarked on the presumed infraction of constitutional principle in Sir E. B. Sugden remaining in the House after he had agreed to accept a disqualifying office, Sir E. B. Sugden declared that he stood on his rights as a member, in maintaining his place in the House; that though he had agreed to accept office, he had not legally accepted, as the appointment had not actually been made. The office in question is held by patent, and is conferred by the delivery of the Great Seal into the hands of the person nominated. He therefore considered that he should be neglecting his duty to his constituents if he abstained from acting as their representative, while he had a legal right to do so. Lord John Russell adverted to the fact, that it was customary 'upon the formal acceptance of office to move for a new writ,' and that, in many such cases, the avoidance of the seat was immediate, though weeks elapsed before the appointment was formally completed. But the present case, together with that of Mr. Horsman above mentioned, showed that it behoved the House to come to some decision on the subject, and to adopt some uniform practice.[m] Next day the matter was again discussed. Sir R. Peel stated that, according to his interpretation of the Act, it was not necessary for any member, to whom office may have been tendered, to vacate his seat 'until the completion of the formal proceedings, which may be considered legally and specially to constitute appointment.' But he had no objection to an understanding that a written tender and acceptance of office should be accounted sufficient to vacate the seat. A mere verbal conversation was not enough to proceed upon. In Sir E. B. Sugden's case the formal instruments had 'advanced to such a stage as practically to preclude a revocation of the offer;' he therefore would agree to a motion for a new writ. Lord John Russell very much doubted the expediency of requiring a 'written acceptance' before vacating the seat. After some further remarks the new writ was ordered.[n]

On November 22, 1830, a new writ was ordered by the

[1] Mirror of Parlt. 1841, Sess. 2, p. 327.

[m] *Ibid.* pp. 331-333.

[n] *Ibid.* pp. 366-368.

House of Commons for Preston, in the room of the Hon. E. G. Stanley, appointed Chief Secretary for Ireland. On the 25th November, a supersedeas thereto was directed to be issued, it being stated that Mr. Stanley 'had not accepted' the said office 'with the legal technicalities necessary; and that therefore the House, in directing the issue of the writ, acted upon misinformation as to the fact of the vacancy.' This course was declared to be 'quite in accordance with former precedents.'[o] Eight days afterwards the writ was again ordered, without remark.[p]

In 1835, upon the formation of the Melbourne Administration, new writs were ordered in the House of Commons on behalf of several members who had accepted office therein; but in the case of Lord Morpeth, the intended Secretary for Ireland, the writ was ordered upon his having accepted 'the Chiltern Hundreds;' which was explained by 'the circumstance of sufficient time not having yet elapsed for making out his appointment as Chief Secretary for Ireland.'[q] But he appeared at the hustings, and was re-elected in the latter capacity.[r]

New writs upon elevation to the peerage.

The proper time for the issue of a new writ to supply a vacancy in the House of Commons may be further illustrated by reference to vacancies occasioned by elevation to the peerage.

When a member of the House is created a peer of the realm, it is usual to issue the writ on his kissing hands after the warrant under the sign manual has issued, although this is but a preliminary step to the making out of the patent; but the writ is sometimes delayed until the patent has been made out, or the *recepi* endorsed.[s]

But where a peerage devolves by inheritance upon a member of the House of Commons, it is customary to await the issue of the writ of summons calling the heir to the other House; when the motion for a new writ of election should be 'in place of —— now summoned up to the House of Lords.' It is not because the issuing or withholding the writ of summons at all affects the rights of succession, that this practice is observed, for

[o] Mirror of Parl. 1830, sess. 2, p. 350.
[p] *Ibid.* p. 365.
[q] *Ibid.* 1835, p. 845.
[r] Smith, Parl. of England, vol. ii. p. 139.
[s] Campbell, Lives of the Chancellors, vol. iv. p. 125. But see May, Parl. Prac. ed. 1868, p. 587.

the legitimate heir is entitled to demand his writ of summons *ex debito justitiâ*, if it has been wilfully or inadvertently withheld; but because it affords the readiest proof to the House of Commons that one of their number has become a peer, and is no longer entitled to a seat in their chamber.[t] The fact of the issue of a writ of summons is not indeed the only conclusive evidence in such cases, for should any unreasonable delay occur, or other cause require it, the House might institute an enquiry into the birth, parentage, and legitimacy of the claimant, he being a member of the Commons.

The exceptions to the general practice,—to await the time when the mover of a new writ, upon a member inheriting a peerage, is able to assert that the summons to the Lords has been issued,—have been very rare, and have served to confirm the propriety of the rule.

Thus, in 1811, a new writ was ordered for Gloucestershire, in place of Colonel Berkeley, commonly called 'Lord Dursley,' the reputed son and heir of the Earl of Berkeley, upon the announcement of his father's death. But Colonel Berkeley's right to the title was disputed, and finally disallowed by the House of Lords; so that the colonel, having been previously deprived of his seat in the Commons by the premature and wrongful issue of a new writ, was for the time altogether excluded from Parliament, though, had it not been for objections raised on other grounds, he would probably have been reinstated in his former seat. But he afterwards sat in the Commons for another constituency.[u]

In 1840, in the case of Lord Stormont, M.P. for Perthshire, who on the demise of his father succeeded to the English earldom of Mansfield and the Scotch viscounty of Stormont, the House of Commons, upon being informed of the death of the late lord, although it was admitted that no writ of summons to his eldest son, as Lord Mansfield, had issued, ordered the issue of a new writ of election. This was because, while only the representative peers of Scotland are summoned to the House of Lords, by the Scotch law, immediately upon the death of a peer his eldest son becomes a peer of Scotland, and no proceedings are required to give him all the rights thereunto

[t] See Hans. Deb. vol. lxxiv. pp. 109, 283.

[u] Parl. Deb. vol. xviii. p. 807; vol. xx. p. 782. Lord Colchester's Diary, vol. ii. pp. 306, 340. Smith's Parliaments, vol. i. p. 113. And see Mr. Speaker's observations upon the Beeralston Writ, Mirror of Parl. 1830. sess. 2, p. 672; and on the Nottingham County Writ, *ibid.* 1835, p. 279.

appertaining: and, by the Act of Union, Scotch peers are made ineligible to sit in the House of Commons. But the motion for the new writ gave rise to much debate, and was agreed to by only a small majority.[v]

Chiltern Hundreds.

Any statement of the law and practice concerning the vacation of the seat of a member of the House of Commons upon accepting an office of profit from the crown, would be incomplete without some account of the Chiltern Hundreds. It being contrary to the ancient law of Parliament for a chosen representative of the people to refuse to accept, or to resign the trust conferred upon him,[w] a member wishing to retire accepts an office by which his seat is legally vacated. For this purpose it is customary to confer upon any member who may apply for the same, the office of steward or bailiff of Her Majesty's three Chiltern Hundreds, of Stoke, Desborough, and Bonenham; or, of the Manors of East Hendred, Northstead, or Hempholme; or, of Escheator of Munster.[x] These stewardships are merely nominal offices; but they are technically sufficient for the purpose in view; and, as soon as that purpose is accomplished, they are resigned.[y]

The appointment to the Chiltern Hundreds is vested in the Chancellor of the Exchequer; but he acts formally and ministerially in conferring it upon any applicant, unless there appears to be sufficient grounds to justify a refusal. For example, it would never be granted to a person in a state of mental incapacity, or where proceedings are pending whereby the applicant might be lawfully deprived of his seat, or expelled from the House.[z]

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[v] Mirror of Parl. 1840, p. 1142. For proceedings to correct a mistake attending the issue of this writ, see *Ibid.* pp. 1318, 1384. See also the case of Lord Bruce, Hans. Deb. vol. lxi. p. 420. And see May, Parl. Prac. ed. 1863, p. 584.

[w] May, Parl. Prac. ed. 1863, p. 592. Members of the Canadian Legislature are empowered to resign their seats at any time except when their right to the seat is contested, or within the ordinary period for petitioning against their election: by the Consol. States of Canada, c. 3, secs. 10–14.

[x] 2 Hats. Prec. 55 *n.* As an office cannot be conferred twice on one day, if there be a second applicant, on the same day, for the Chiltern Hundreds, it is necessary to have recourse to another stewardship. Peel, Hans. Deb. vol. lxxxiii. p. 505.

[y] May, Parl. Prac. ed. 1863, p. 592.

[z] *Ibid.* p. 592. Hans. Deb. vol. lxv.

New writs not to be issued until expiry of time for questioning returns.

Where a vacancy occurs in the House of Commons,—whether by death, elevation to the peerage, or acceptance of office,—prior to, or shortly after, the first meeting of a new Parliament;—or, within fourteen days after the return of a newly-elected member,—a writ will not be issued upon any such member so vacating his seat, until the expiration of the time limited for receiving election petitions; which, by sessional order, is fourteen days from the commencement of the session, or from the bringing in of a new return. Furthermore, upon any such vacancy occurring, as a general rule, no new writ can issue, if a petition has been presented against the election or return, until the petition has been finally adjudicated upon by an election committee.[a] And for the obvious reason that it might appear, as a result of such an investigation, that there had been no vacancy, for that, in fact, another person was the rightful owner of the seat.

And if there be a petition, no writ to issue, if seat be claimed.

But in 1852, the latter part of this general rule was disregarded, and a contrary practice established, on behalf of members accepting office. In this year there was a general election, and, shortly after the meeting of Parliament, it became necessary to form a new administration. The wholesome and hitherto invariably respected rule—to delay the issue of writs upon any vacancy until the rights of the election (if called in question) had been determined—would undoubtedly have occasioned some public inconvenience at this juncture. Amongst the members who had accepted office in the new ministry, there were several whose returns had been petitioned against. Whereupon the Speaker was appealed to, and he decided, 'that in the case of an election petition complaining of an undue return, or of the return of a member

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p. 1102. And see the Bodmin case (Election Compromises), *ibid.* vol. clv. pp. 960, 1039, 1293. See also the Pontefract Election case, *ibid.* pp. 1296, 1254, 1276, 1406, 1409. At the termination of this enquiry the sitting member (W. Overend) accepted the Chiltern Hundreds on February 2, 1860.

[a] See Clerk, Law of Elections, p. 223. Hans. Deb. vol. clxxxvi. p. 1199.

in consequence of bribery, *but not claiming the seat for another person*, it was competent for the House to issue a new writ. But that in the case of a petition complaining of the undue return of a member, and *claiming the seat* for another person, it was not competent for the House to issue a new writ, pending [the decision upon] the petition; inasmuch as the House in that case could not know which of the two [candidates] had been duly elected.' As it happened that in every instance but one, where petitions had been presented against the return of the newly-appointed ministers, the seat was not claimed, new writs were immediately issued.[b] But in the Athlone case, where the seat of the sitting member (Mr. Keogh) was claimed for another person, no new writ was ordered, upon his being appointed Solicitor-General for Ireland, until the petition against his return had been tried and determined.[c]

The new practice—authorising the issue of new writs upon members accepting office, directly after the expiration of the time allowed for petitioning against the return, unless the seat was claimed—was followed, under similar circumstances, in 1859.[d] But it gave rise, in one case (that of Lord Bury), to much dispute. The decision of the Speaker in 1852 was questioned before the Election Committee, and the opinion expressed that the House ought to reconsider the matter.[e] It must be admitted that the weight of legal authority is against the construction of the law adopted by the House of Commons,[f] however much may be said in favour of the speedy issue of the writ on the score of convenience.

Unsuccessful attempts to

In 1867, an attempt was made to get rid of the distinction drawn by the Speaker, in respect to petitions

[b] Hans. Deb. vol. cxxiii. p. 1742. The point had been previously decided to the same effect in the case of Sir Fitzroy Kelly, in April 1852. See May, Parl. Prac. ed. 1863, p. 595.

[c] Clerk, Law of Elec. p. 218 *n.*

[d] May, Parl. Prac. ed. 1863, p. 582; Smith, Parl. Remembrancer, 1859, pp. 103, 105.

[e] Hans. Deb. vol. clvii. p. 1149.

[f] See Clerk, Law of Elections, pp. 212–224.

claiming the seat for another candidate. On April 5, 1867, a member called the attention of the House to the practice that, 'when a petition praying for the seat was presented against any person who had been appointed to an office of profit under the crown, no writ could issue until the petition had been decided.' He pointed out a recent example of the vexatious operation of the existing usage, whereby a minister of the crown had been kept out of the House of Commons by reason of a petition claiming his seat, which was afterwards withdrawn; and he moved, that 'whenever a member of this House shall accept an office of profit under the crown, a writ for a new election may issue, notwithstanding that the time limited for presenting a petition may not have expired, or that a petition praying for the seat may have been presented.' A technical objection prevented the debate on this motion from proceeding; but it was remarked by an old and experienced member, that the mover 'had made out no case for altering the rules of the House' in this matter. For 'that which might turn out to be the property of one person ought not to be given to another. In the very rare case of cabinet ministers not being able to take their seats for a fortnight or three weeks . . . the Secretary to the Treasury, or some of the subordinate officers of the Government who did not vacate their seats, might very well discharge the necessary business in their absence.'[g]

change this practice.

[g] Hans. Deb. vol. clxxxvi. pp. 1199–1201. And see *ibid.* December 15, 1868, which shows that the House of Commons continue to adhere to the practice explained in the text, notwithstanding the altered mode of trying election petitions. In Canada the proposed change has been adopted since 1857. By the Consolidated Statutes of Canada (c. 3, sec. 16) it is provided that a new writ may be issued for the election of a member of the Assembly to fill up any vacancy arising subsequently to a general election, and before the first meeting of Parliament thereafter, by reason of the death or acceptance of office of any member, and such writ may [also] issue at any time after such death or acceptance of office; but the election to be held thereunder shall not in any manner affect the rights of any person entitled to contest the previous election, who, if afterwards proved to have been entitled to the seat, shall take the same as if no such subsequent election had been held.

II. *The Functions of Ministers of the Crown in relation to Parliament.*

Thus far our attention has been mainly directed to the mode in which ministers of the crown find entrance into Parliament, for the general purpose of representing therein the authority of the crown, and the conduct of the several branches of the executive government, and in order to enable them to administer the affairs of state which have been assigned to their control, in harmony with the opinions of that powerful and august assembly.

We must now point out the functions appertaining to ministers in connection with Parliament, defining those which belong to the administration collectively, and those for which particular ministers are accountable.

1. The Parliamentary Duties of Ministers collectively.

Our observations on this subject may be suitably arranged under the following heads :—(*a*) The Speech from the Throne and the reply thereto. (*b*) The introduction of public bills and the control of legislation. (*c*) The oversight and control of business generally. (*d*) The necessity for unanimity and cooperation amongst ministers, on the basis of party, and herein of the functions of the Opposition. (*e*) Questions put to ministers, or private members, and statements by ministers. (*f*) The issue and control of royal or departmental commissions.

Speech from the throne.

(*a.*) *The Speech from the Throne, and the Address in reply.*

According to modern constitutional practice, the first duty of ministers in relation to Parliament is to prepare the speech intended to be delivered by, or on behalf of the sovereign at the commencement and at the close of every session.

Parliament being the great council of the crown, it has always been customary for the sovereign to be personally

present when it is first assembled. But the duty of declaring the causes of summoning Parliament has been assigned, from the earliest times, to one of the king's principal ministers, usually the Lord Chancellor.[h]

In addition to the formal 'opening of the cause of the summons' by the Chancellor, it was usual for the sovereign himself to address a few words of compliment, congratulation, or advice to his faithful Parliament. This was understood to proceed directly from the heart of the sovereign, and was not intended as a substitute for the more formal and official utterance of the minister. Thus, at the opening of the first Parliament of King James (A.D. 1603) it is recorded: 'The king's speech being ended' [the which is omitted from the journal, 'because it was too long to be written in this place'] 'the Lord Chancellor made a short speech, according to the form and order.'[i] At other times, however, James I. dispensed with the services of the Chancellor, and made his own speech to be the vehicle of communicating to Parliament the causes of summons.[j]

Upon the accession of Charles I., the following ceremony was observed at the opening of his first Parliament:—'The king's majesty being placed in his royal throne, the Lords in their robes, and the Commons present below the bar, his majesty commanded prayers to be said. And, during the time of prayers, his majesty put off his crown, and kneeled by the chair of estate.[k] Then it pleased his majesty to declare the cause of the

[h] Elsynge, Meth. of Parl. c. vi.

[i] Lords' Journals, vol. ii. p. 264. These speeches, contrary to modern usage, were spoken before the Commons were commanded to choose their Speaker. On the above occasion, when the Speaker was presented for the king's approval, his majesty repeated the speech he had previously delivered, 'for that he supposed many of the Commons of the Lower House were absent when he then delivered the same.' *Ibid.* p. 265.

[j] *Ibid.* vol. iii. pp. 8, 209.

[k] A similar beautiful example of a monarch merging the sovereign in the man, in the presence of his people, was afforded by George III., when, at his coronation, 'unadvised by precedent or counsel, he doffed the royal crown that he might with becoming humility partake of the Holy Communion.' Edinb. Review, vol. cxxvi. p. 37.

summons of this Parliament,' in a speech which, in comparison with the quaint and pedantic harangues of his royal father, was brief and business-like. It concluded in these words:—'Now, because I am unfit for much speaking, I mean to bring up the fashion of my predecessors, to have my Lord Keeper to speak for me in most things; therefore, I commanded him to speak something to you at this time—which is more for formality than any great matter he hath to say unto you.' Then followed a few observations from the Lord Keeper, setting forth the king's reasons for calling the present Parliament.[l]

After the Restoration, the ancient and constitutional practice was continued of entrusting to the Lord Chancellor the formal communication of the causes for convening Parliament; whilst the sovereign gave personal expression to his desires and sentiments upon the occasion.[m] One of Charles II.'s own speeches is probably the first instance of an avowedly written speech read by an English monarch to the assembled Parliament. On October 21, 1680, both Houses being present, the king said:—'My Lords and Gentlemen, I have many particulars to open to you; and because I dare not trust my memory with all that is requisite for me to mention, I shall read to you the particulars out of this paper.' Then follows the royal speech, which, contrary to the ordinary practice, was not supplemented by any observations from the Lord Chancellor.[n]

Since the Revolution of 1688, there has been but one address from the throne at the opening of Parliament—that which is uttered by the mouth of the king when present, or by the Lord Chancellor in his behalf, and by his express command,[o] or by commissioners deputed by

[l] Lords' Journals, vol. iii. p. 435.

[m] *Ibid.* vol. xiii. p. 293.

[n] *Ibid.* vol. xiii. p. 610. See Smith, Parl. Remembrancer, 1862, p. 4.

[o] As in the case of George I., who, from his inability to speak English, directed the Lord Chancellor to read the speech, when he opened Parliament in person. Campbell's Chancellors, vol. iv. p. 600. Her Majesty Queen Victoria followed this precedent when she opened Parliament on February 6, 1866, and again, on February 5, 1867.

the sovereign in his absence. And it has become the invariable practice, and is an acknowledged constitutional right, to treat this speech, by whomsoever written, as the manifesto of the minister for the time being, so as to admit of its being freely criticised or condemned, with the usual license of debate.[p] Ministers responsible for the king's speech.

William III. was too independent a monarch to receive his speech cut and dried from the hands of any one, though he did not hesitate to avail himself of the ability and experience of his Lord Keeper Somers to clothe his own high thoughts and purposes in dignified and judicious language.[q] And even after Somers had retired from office, his accomplished pen was still employed by the king on this service.

We have a notice, concerning the speech at the opening of Parliament in 1701, which points to the introduction of that which has since become an unvarying usage. The crafty and experienced Earl of Sunderland—who was the chief adviser of James II. during most of his unhappy reign, and who contrived to exercise immense influence over King William until his retirement from public life in 1697—writing to Lord Somers, to advise him upon the proper management of the new Parliament, says:—'It would be well for the king to give order to two of the Cabinet to prepare the speech, as the Duke of Devonshire and Secretary Vernon, and bid them consult in private with Lord Somers, rather than to bring to the Cabinet a speech already made.' Sunderland's advice was taken in such good part, that the speech with which King William opened this his last Parliament, on December 31, 1701, was entrusted to Somers to draft, notwithstanding that the great ex-Chancellor was no longer a minister, although

[p] Massey, Reign of George III. vol. i. p. 156. Parl. Hist. vol. xxiii. p. 266. Mirror of Parlt. 1830, sess. ii. p. 36. A similar latitude is allowed in the debate upon the address: witness the speech of Mr. O'Connell, on February 5, 1833, when he styled the address a 'brutal and bloody' one, without being called to order. *Ibid.* 1833, p. 36.

[q] Macaulay, Hist. of Eng. vol. iv. p. 726.

he still remained one of the king's most honoured servants. Burnet pronounced this speech to be 'the best that he, or perhaps any other prince, ever made to his people.'[r]

Prompted by her Tory counsellors, Queen Anne's speech, at the opening of Parliament in 1711, was made the vehicle of a startling attack upon the conduct of her great general, and quondam Whig minister, Marlborough, whose recent campaigns upon the Continent had rendered him unpopular at court and with the people. In the opening words of her address, her majesty said: 'I am glad that I can now tell you that, notwithstanding the arts of those who delight in war, both place and time are appointed for opening the treaty of a general peace.' To this the Commons—whose feelings against Marlborough were very bitter—responded by a special reference in their address, to 'the arts and devices of those who, for private views, may delight in war.'[s]

The first speech delivered by George III., upon his accession to the throne in 1760, was the production, not of his constitutional advisers, but of ex-Chancellor Hardwicke, in conjunction with the king's favourite, the Earl of Bute, and with the addition of a paragraph, adverting to his birth and education as a 'Briton,' which was penned by the king's own hand. The draft of this speech, however, was communicated to the Duke of Newcastle, in order that it might be formally 'laid before the king in Cabinet Council.'[t] We learn that upon this occasion, the king endeavoured to procure the insertion of other words, referring to 'the bloody and expensive war' in which England had been engaged, but Mr. Pitt, who had been mainly responsible for the conduct of that war, succeeded with much difficulty in prevailing upon his majesty to omit them.[u]

[r] Parl. Hist. vol. v. p. 1329. Pict. Hist. of Eng. vol. iv. p. 134. Eng. Cyclop. (Biography), vol. v. p. 592.

[s] Knight, Pop. Hist. of Eng. vol. v. pp. 377, 378.

[t] Harris, Life of Hardwicke, vol. iii. p. 231. And see *ante*, vol. i. p. 50.

[u] May, Const. Hist. vol. i. p. 12. Edinb. Rev. vol. cxxvi. p. 4. Lords' Journ. vol. xxx. p. 9.

By modern constitutional practice, the royal speech to be addressed to Parliament is drafted by the Prime Minister, or by some one under his advice and direction; it is then submitted to the Cabinet collectively, that it may be settled and approved, and it is afterwards laid before the sovereign for consideration and sanction.[v]

Contents of a royal speech to Parliament.

Great care is necessary in framing a royal speech, so as to avoid any expression that might occasion differences of opinion in Parliament, lead to acrimonious debate, or otherwise impair the harmony that ought to subsist between the crown and the other branches of the legislature.[vv] The speech at the opening of a session should include a statement of the most material circumstances of public importance which have occurred since Parliament separated, and should announce in general terms the most important measures which it is the intention of ministers to bring under the consideration of Parliament.[w] But nothing should be mentioned by the sovereign that Parliament cannot echo with freedom and propriety, it being always borne in mind that Parliament echoes nothing without discussion. It is for this reason that it is not customary to mention the death of foreign sovereigns in a king's speech. To bring a deceased foreign sovereign before Parliament for discussion would be a liberty unwarrantable with the sovereigns of other nations.[x] Furthermore, in the speech at the close of the session, as well as upon all other occasions, the sovereign should abstain from taking notice of any Bills or other matters depending, or votes that have been given, or speeches made, in either House of Parliament, until the same have been communicated to the crown in a formal and regular manner.[y]

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[v] Campbell, Chanc. vol. vii. p. 409.

[vv] Yonge, Life of Lord Liverpool, vol. i. p. 207.

[w] Earl Derby, Hans. Deb. vol. cxliv. p. 22. See the reason assigned for omitting any reference to an intended measure relative to the Civil List, in the speech from the throne. Mirror of Parlt. 1831, p. 193.

[x] Mr. Canning's letter, January 27, 1826. Stapleton's Canning, p. 610.

[y] Hatsell, Prec. vol. ii. pp. 353, 356.

In 1864, Lord Palmerston (Prime Minister) adverted to the omission in the royal speech of the old stereotyped phrase, that her majesty 'had received friendly assurances from foreign powers.' He said it was not the first time that that very unmeaning passage had been left out, and he trusted it would never appear again, 'because such friendly assurances are never given or received;' and the only meaning of the expression was that the sovereign was in good relations with foreign powers, which when it was actually the case should be stated plainly.[z]

It was formerly the usage for the Prime Minister to read over the royal speech to the supporters of government, on the day before its delivery, in 'the Cockpit,' *i.e.*, the Treasury Chambers—so called from these apartments having been originally built by Henry VIII. as a Cockpit, and assigned by Charles II. to the use of the Treasury[a]—but the custom was dropped in 1794 or 1795.[b] It has since been the practice to read the speech the evening previous to its delivery to the chief supporters of the government in both Houses, at the dinner-table of the leaders of the Lords and Commons respectively.

Addresses of thanks for the speech.

One of the first acts, in both Houses, at the commencement of the session, is to pass an address of thanks in answer to the speech from the throne. It was during the premiership of Sir Robert Walpole, in 1726, that we find the first instance of the two Houses echoing the words of the speech, in such addresses;[c] a practice which has since been invariably followed.

Prior to the Revolution of 1688, it was customary to postpone, until a subsequent day, the consideration in Parliament of the speech from the throne, so as to afford an opportunity to members to become more fully acquainted with its contents. But since that epoch, it has been usual to move the address in answer to the speech on the same day that it was delivered; inasmuch as

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[z] Hans. Deb. vol. clxxvi. p. 1286.
[a] Thomas, Hist. of Exchcq. p. 137.
[b] Russell, Memorials of Fox, vol. ii. p. 211, *n*.
[c] Campbell, Chancellors, vol. iv. p. 600.

members had ample means of knowing the contents of the speech before they were called upon to debate it, either by attending overnight at the Cockpit, or through the medium of the newspapers, into which the general contents of the royal specch ordinarily find their way on the morning of the day upon which it is uttered. In the year 1822, an attempt was made in the House of Commons to defer the consideration of the speech for two days, but without success.[d]

Royal speeches, in former times, were generally of considerable length, embracing a variety of topics, which rendered it advisable to take time in framing a suitable reply; but since the introduction of parliamentary government, it has become the practice to treat the several topics contained in the speech in a manner which does not oblige the Houses, in their addresses of thanks, to pronounce any opinion upon questions of a doubtful character, but rather enables them to reserve for separate discussion upon subsequent motions all matters upon which there is likely to be any material difference of opinion amongst members of the legislature.[e] Rule in framing such addresses.

It has now become a well-established rule, to regard the speech from the throne, and the address in reply thereto, as reciprocal acts of courtesy between the crown and the Houses of Parliament, and the address itself as the unanimous and respectful expression of the deference with which the House should receive the first communication of the session from the sovereign, and as pledging the House to nothing, save the serious consideration of the matters referred to therein. In this point of view, both the speech and the address should be so framed that no difference of opinion could ordinarily arise on either, and no necessity be imposed upon the opposition to move an amendment to the address.[f]

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[d] Hans. Deb. N.S. vol. vi. pp. 27, 47; and see *ibid.* vol. lxxii. p. 60.

[e] Lord John Russell, vol. lxxii. p. 85; Sir R. Peel, *ib.* p. 94; Palmerston, *ibid.* vol. cii. p. 205; and see *ibid.* vol. cxxxvi. p. 91.

[f] Sir R. Peel, Mirror of Parl. 1831-2, p. 20; Lord Melbourne,

Amendments to the address.

Thus, on December 6, 1831, a formal amendment was made to the address, in the House of Commons, on motion of the Chancellor of the Exchequer, and in accordance with the general wish of the House, for the purpose of rendering it still more non-committal on a particular point.[g] See also, an instance in 1852, of the cautious wording of a paragraph of the address, so as to avoid any expression of opinion on a certain political question; with the observations of Lord Derby (the leader of the opposition in the House of Lords) approving of this form of expression in regard to a proposed measure, which, on its own merits, he was prepared to condemn.[h]

Accordingly it has gradually become the practice to refrain from moving an amendment to the address in answer to the royal speech, 'unless some great political objects were in view, and likely to be attained;' or, unless some assertion were made in the address to which the opposition found it impossible to assent.[i]

It has sometimes happened, however, that ministers 'have felt it to be their duty, and of importance to the public service, that on the first occasion of meeting the Parliament, the definite and positive opinion of Parliament should be taken on some great principle, introduced for the purpose of regulating their public conduct.'[j] And sometimes the opposition has deemed it to be incumbent upon them, at the outset of a session, to propose amendments to the address for the purpose of determining whether the administration does or does not possess the confidence of the House.[k] But these are rare and exceptional occurrences.

On January 16, 1840, the Duke of Wellington moved an amendment to the Lords' address in answer to the speech from the throne

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ibid. 1837, p. 5; Lord Brougham, *ibid.* 1839, p. 16; Lord Derby, Hans. Deb. vol. cxliv. p. 22; Mr. Gladstone, *ibid.* vol. clxxxv. p. 67; and see Mirror of Parl. 1836, p. 13; 1837, p. 15; 1837–8, p. 46.

[g] Mirror of Parl. 1831–2, pp. 27, 29; see also, Hans. Deb. vol. cxliv. pp. 191, 253; *ibid.* vol. clxi. p. 14.

[h] *Ibid.* vol. cxix. pp. 13, 30.

[i] *Ibid.* vol. clvi. p. 28.

[j] Lord Stanley (Earl of Derby), *ibid.* vol. lxxxix. p. 18.

[k] See cases of such amendments in both Houses, in 1841, and in the House of Commons in 1859; *ante*, vol. i. pp. 138, 158; and see Smith, Parl. Rememb. 1859, p. 91. See also the amendment to the address carried against ministers in the House of Commons in 1835, *ante*, vol. i. p. 125.

wherein her majesty's approaching marriage with Prince Albert was announced, for the insertion of the word 'Protestant,' before the name of the Prince. Having shown that it was in conformity with precedent, the amendment was agreed to, notwithstanding the opposition of the Prime Minister.[l] But the success of this amendment was attended with no political consequences, though the matter gave rise to much discussion, both in and out of Parliament.[m]

The mover and seconder of the address.

It is customary for the leader of the House to entrust the moving and seconding of the address in answer to the speech to some member who is not an 'habitual speaker;'[n] and such occasions afford an excellent opportunity for the introduction to the notice of Parliament of members from whom a successful *debut* may be anticipated. The House is always disposed to receive with favourable consideration new candidates for parliamentary distinction, and the numerous topics of public interest contained in the speech present a peculiarly advantageous opening for an inexperienced debater. And here it may be noticed, that by the 37th rule of the House of Commons, the proposer and seconder of such a motion ought to 'attend in their places in uniform or full dress.'

In selecting persons for this duty, it is usual, in the House of Commons, to make choice of a member who represents the landed interest to move the address, and some one specially acquainted with commerce and mercantile affairs, to be the seconder. No particular usage is observed in the House of Lords in this particular.[o]

The form and order of drawing up the address in answer to the speech, and the stages at which it is permissible to propose amendments thereto, need not be described, as they are clearly explained in May's 'Parliamentary Practice.'[p]

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[l] Mirror of Parl. 1840, pp. 8–21; and see Hans. Deb. vol. clxix. pp. 646–650.

[m] See the Early Years of the Prince Consort, pp. 271–273.

[n] Hans. Deb. vol. clxxiii. p. 7.

[o] London Illust. News, February 16, 1867, pp. 165, 166.

[p] May, ed. 1868, pp. 200, 266; but see cases on these points, Mirror of Parl. 1831, pp. 7–10; *ibid.* 1834, p. 37; *ibid.* 1839, p. 43; Hans. Deb. vol. clxxxv. p. 78.

Pending the agreement of the House to this address questions may be put to ministers, and ordinary addresses passed for the production of papers.[q]

(b.) *The introduction of Public Bills, and the Control of Legislation.*

Ministerial measures.

In addition to the measures specially commended to Parliament in the speech from the throne, it is the right and duty of ministers of the crown to submit to its consideration whatever measures they may deem to be necessary for the public service.

Bills affecting the rights of the crown.

Where the rights of the crown, its patronage or prerogative, are specially concerned,[r] it is not sufficient that the subject matter of any Bill affecting the same has been generally recommended to the notice of Parliament in the speech from the throne, but a special royal message,—either under the sign manual, or verbally conveyed through a minister of the crown,—is also necessary to signify that her majesty is pleased to place at the disposal of Parliament her interests, &c., in the particular matter.[r] This intimation should be given before the committal of the Bill.[s] But where a measure of this description is initiated by a private member, and not upon the responsibility of ministers, the House ought to address the crown for leave to proceed thereon, before the introduction of the Bill;[t] although, according to the practice of Parliament, it is not absolutely necessary to obtain this assent before the third reading.[u]

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[q] Mirror of Parl. 1833, pp. 32, 57; and see *post*, p. 341 *n.*

[r] This phrase does not mean that the crown gives its approbation to the substance of the measure, but merely that the sovereign consents to remove an obstacle to the progress of the Bill, so that it may be considered by both Houses, and ultimately submitted for the royal assent.—Hans. Deb. vol. cxci. p. 1445; vol. cxcii. p. 732.

[s] Church Temporalities (Ireland) Bill, Mirror of Parl. 1833, pp. 1627, 1733, 2377, 2836.

[t] *Ibid.* 1835, pp. 608, 724, 1826. *Ibid.* 1837–8, p. 778. Hans. Deb. vol. lxiii. p. 1585. *Ibid.* vol. cxci. p. 1899, vol. cxcii. p. 113. And see the debate on this point in the House of Lords, April 28, 1868.

[u] The Speaker, Hans. Deb. vol. cxci. p. 1564. Mr. Gladstone, *Ibid.* p. 1898. May, Parl. Prac. ed. 1863, p. 430.

Ministers responsible for legislation.

By modern constitutional practice, ministers of the crown are held responsible for recommending to Parliament whatsoever laws are required to advance the national welfare, or to promote the political or social progress of any class or interest in the commonwealth. This is a natural result of the pre-eminent position which has been assigned to ministers of state in the Houses of Parliament, wherein they, collectively, represent the authority of the crown, personify the wisdom and practical experience which is obtainable through every branch or ramification of the executive government; and as leaders of the majority in Parliament are able to exercise powerful influence over the national counsels.

But it has only been by degrees, and principally since the passing of the Reform Acts of 1832, that it has come to be an established principle, that all important acts of legislation should be originated, and their passage through Parliament facilitated, by the advisers of the crown.[v] Formerly, ministers were solely responsible for the fulfilment of their executive obligations, and for obtaining the sanction of Parliament to such measures as they deemed to be essential for carrying out their public policy.[w] But the growing interest which, of late years, has been exhibited by the constituent bodies upon all public questions, and the consequent necessity for systematic and enlightened legislation for the improvement of our political and social institutions, and for the amelioration of the laws, in accordance with the wants of an advancing civilisation, together with the difficulty experienced by private members in carrying Bills through Parliament, have led to the imposition of additional burthens upon the ministers

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[v] Thus Earl Grey (then in opposition) contended in 1829 that ministers having advised the sovereign to recommend a particular measure to the consideration of Parliament, were responsible for that advice, but that for the introduction of the measure into Parliament they were not at all responsible as ministers, but merely as members of Parliament; a doctrine which would not be countenanced in the present day. Mirror of Parl. 1829, p. 586.

[w] See Lord John Russell's speech in 1848. Hans. Deb. vol. ci. pp. 709, 710.

of the crown, by requiring them to prepare and submit to Parliament whatever measures of this description may be needed for the public good;[x] and also to take the lead in advising Parliament to amend or reject all crude, imperfect, or otherwise objectionable measures which may at any time be introduced by private members.[y]

These high functions are performed in direct responsibility to Parliament, and especially to the House of Commons, to whom ministers are accountable for the policy and wisdom, as well as for the legality, of all their acts; because they are bound to exert themselves to the utmost in the service of the crown, and are justly liable to punishment if they undertake such obligations without possessing the ability requisite for the adequate discharge thereof.[z]

But, in proportion to the enlarged scope of ministerial duty in the initiation of important public measures, greater latitude should be allowed to Parliament to criticise, amend or reject the same, without it being assumed that their general confidence in ministers is consequently impaired.[a] On the other hand it should be freely conceded to private members that they have an abstract right to

[x] It is contrary to parliamentary etiquette to divide the House upon a motion for leave to introduce a Bill, when moved by a member of the administration. Hans. Deb. vol. clxx. pp. 494, 509. But see an instance where the introduction of a government Bill relating to Ireland was strenuously resisted, and several divisions taken thereon. *Ibid.* vol. clix. p. 1839. And here it may be remarked that a measure recommended to Parliament by the government, and for the success of which they hold themselves responsible, need not be introduced by a Cabinet minister, but may be entrusted to a subordinate member of the ministry. Thus in 1831 the English Reform Bill was submitted to the House of Commons by Lord John Russell, who was not 'a member of the government,' but merely a subordinate political officer; *i.e.* Paymaster of the Forces. (See Mirror of Parl. 1830-31, pp. 9, 295, 315.) In like manner, the Irish Reform Bill in 1866 was brought in by Mr. Chichester Fortescue, the Secretary for Ireland, but not a Cabinet minister. And a similar Bill in 1867, by Lord Naas, under similar circumstances.

[y] See Park's Lectures on the Dogmas of the Constitution, pp. 36–41. And see *ante*, vol. i. p. 133.

[z] See Grey, Parl. Gov. chap. ii. Bowyer, Eng. Const. p. 136; Fischel, p. 502; Rowlands, p. 437; Cox, Inst. Eng. Gov. p. 30.

[a] See Edinb. Review, vol. xcv. p. 226; vol. cviii. p. 278, *n.* And see *ante*, vol. i. pp. 516–525, as to modifications made by the House of Commons in ministerial financial measures.

submit to the consideration of Parliament measures upon every question which may suitably engage its attention, subject only to the limitations imposed by the prerogative of the crown, or by the practice of Parliament.

Ministers expected to originate all important legislation.

Bearing this in mind, it must be admitted that the rule that all great and important public measures should emanate from the executive has of late years obtained increasing acceptance. The remarkable examples to the contrary, which are found in parliamentary history antecedent to the first Reform Acts,[b] could not now occur, without betokening a weakness on the part of ministers of the crown which is inconsistent with their true relation towards the House of Commons. By modern practice, 'no sooner does a great question become practical, or a small question great, than the House demands that it shall be "taken up" by the government. Nor is this from laziness or indifference. It is felt, with a wise instinct, that only thus can such questions in general acquire the *momentum* necessary to propel them to their goal, with the unity of purpose which alone can uphold their efficacy and [preserve their] consistency of character.'[c] The effect of adverse amendments by either House of Parliament, to government Bills, upon the position of ministers towards such Bills, or towards Parliament itself, will naturally depend upon the circumstances of each particular case.

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[b] For example, the Bill for Economical Reform, carried by Mr. Burke in 1782; the Currency Bill, carried by Mr. Peel, in 1819. Moreover, during the administrations of Mr. Pitt, and subsequently during that of Lord Grenville, there were repeated instances of important public measures, (*i.e.* for the reform of Parliament and for the abolition of the slave trade) being introduced into the House of Commons by a minister of the crown 'as an individual member of Parliament without the responsibility of government being attached to them.' (Parl. Deb. vol. ix. p. 268.) And so recently as December 2, 1830, a Bill to establish Local Courts of Justice throughout England was submitted to the House of Lords by Lord Chancellor Brougham, in his individual capacity as a Peer, and without previous consultation with his colleagues in the government. (Mirror of Parl. 1830–31, p. 377.) But in a subsequent session, this Bill was again introduced as a government measure. *Ibid.* 1833, p. 2500.

[c] Edinb. Review, vol. cxxvi. p. 565.

Adverse amendments to ministerial measures.

In 1830, a Bill to consolidate and amend the laws relating to forgeries, which was introduced into the House of Commons by Mr. Peel (the Home Secretary) having been amended, by the introduction of a clause abolishing the punishment of death for forgery, against his consent, he renounced all further responsibility for the Bill, which was then taken up by an opposition member (Sir James Mackintosh) who succeeded in passing it through the House. But the House of Lords amended the Bill so as to make it acceptable to the Government. Whereupon Sir Robert Peel resumed the charge of it, obtained the consent of the House of Commons to the Lords' amendments, and it became law.[d]

In 1852, Lord John Russell (then Prime Minister) on moving for leave to bring in a Bill to amend the laws respecting the local militia, was met by an amendment proposed by Lord Palmerston, to omit the word 'local,' which was carried against the Government. Regarding this as a determination on the part of the House not to allow the ministers of the crown to lay before them their plan for effecting an important administrative reform, but to insist upon the introduction of some other measure which ministers had not prepared, of which they knew nothing, and for which they were not willing to be held responsible, Lord John Russell declined to bring in the Bill, and three days afterwards, the ministry resigned.[e] Subsequently, the order of leave was read, and members of the new administration were ordered to prepare and bring in the Bill.[f]

The nature and extent of the responsibility which now appertains to ministers of the crown, in matters of legislation, will be rendered more intelligible by a consideration of the following precedents:—

Allowable amendments.

In 1841, Lord John Russell, in defending his administration against Sir R. Peel's motion for a vote of want of confidence, protested against a government being expected to carry all the measures they may submit to Parliament, or to possess 'the same general and uniform support on the part of the House of Commons which was required when ministers had merely acts of administration to perform.' 'If,' said he, 'on the one hand, new duties have been imposed on ministers, and you require them to carry through Parliament measures which they deem of essential importance, so, on the other hand, you must make a fair allowance for the effect of discussion, and the expression of the deliberate opinions, first of

[d] Mirror of Parl. 1830, pp. 2195, 2245, 2956.
[e] Hans. Deb. vol. cxix. pp. 838–876, 887.
[f] *Ibid.* vol. cxx. pp. 267, 281.

members of this House and secondly of our constituents, which will inevitably occasion the alteration of some measures and the rejection of others.' [g]

Factories Bill.

In 1844, Sir R. Peel's administration was defeated in Committee of the House of Commons, on the Factories Bill, the House affirming, by three distinct votes, each of which was strenuously opposed by ministers, the expediency of reducing the hours of labour in factories to ten instead of twelve. Ministers, however, tried the question a fourth time, on a motion which involved the same principle, and succeeded in reversing the former decision, by a majority of seven. The effect of these adverse votes was to place the Bill in a state of inextricable confusion. Shortly afterwards, the Home Secretary (Sir James Graham) expressed to the House, for himself and colleagues, their sense of the imperative duty of ministers to accept what they deemed to be a deliberate expression of the opinion of the House, provided only that they were not thereby called upon to advocate what they believed to be opposed to the public interests. Such being their opinion in regard to the vote of the House in favour of a restriction of factory labour to ten hours, he moved for leave to withdraw the Bill, and introduce another, which while it embodied various points to which the House had acceded, nevertheless upheld the principle of twelve hours' labour.[h] Lord John Russell opposed this motion, and deprecated the course of ministers, in seeking to compel the House, unless they were prepared to overthrow the government, to sanction the introduction of a new Bill, to contain a principle which the House had already pronounced to be objectionable. He did not think it would be for the public advantage if a government should consider itself bound to carry every measure in the House exactly in the shape they had proposed it, and he hoped that, with respect to questions of legislation affecting the whole body of the people, of whose feelings so many members must be cognisant, the House would retain some of its legislative authority.[i] In reply, Sir R. Peel acknowledged 'that with respect to many great measures, the sense of the legislature ought to prevail; and that if no great principle be involved, and very dangerous consequences are not expected to result, the government ought not to declare to Parliament that they stake their existence as a government on any particular measures, but are bound, on certain occasions, to pay proper deference to the expressed opinions of their supporters.' And, when making such concessions, they ought not to be taunted with yielding their own opinions and adopting

[g] Mirror of Parl. 1841, pp. 2120, 2121.

[h] Hans. Deb. vol. lxxiii. pp. 1482–1493.

[i] *Ibid.* p. 1638. And see Lord Howick's remarks, *Ibid.* vol. lxxiv. p. 931.

those of a majority. As to his asking the House to accept a new Bill, containing the objectionable provision above mentioned, Sir R. Peel said, the constitutional practice was to permit opportunities of frequent deliberation on legislative measures, and not to consider one or two decisions of the House, carried by small majorities, to be conclusive. Thus, it has been expressly provided that there shall be a number of stages through which every Bill must pass, in order that when opinions are divided, or nearly balanced, there may be an opportunity for reconsidering a decision.[j] Whereupon the first Bill was withdrawn, and a new one ordered. In committee on this Bill, Lord Ashley again moved to insert a clause restricting the hours of labour; but Sir R. Peel having stated that if this motion were agreed to, ministers would resign, it was negatived by a large majority.[k]

Reform Bills.

On May 28, 1866, under Earl Russell's administration, an instruction to make provision against bribery in the new Reform Bill was carried, in the House of Commons, against ministers. Nevertheless the government determined to proceed with the Bill, but left it to the mover of the instruction to frame the bribery clauses. This course, however, was objected to by the opposition, who contended that it was the duty of ministers to consider how this matter could be best disposed of.[l] But soon afterwards, ministers were again defeated on this Bill, when they resigned office, and the Bill was withdrawn.

The proceedings in the House of Commons on the English Reform Bill, brought in by the Derby administration in 1867, afford a striking example of the extent and importance of the modifications to which ministers may be induced to consent, in a measure submitted by them to the judgment of Parliament. The unnatural position of the ministry at this time, in having accepted office when their party was in a minority in the House of Commons, and in continuing to hold office upon the sufferance of their political opponents, coupled with the necessity, admitted on all sides, that a measure of reform should be carried through Parliament at this juncture, was the excuse if not the justification of ministers for consenting that their Reform Bill should be virtually remodelled by the votes of opposition members.[m]

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[j] Hans. Deb. vol. lxxiii. pp. 1639, 1640. See Lord Howick's observations in reply to this argument, *ibid.* vol. lxxv. p. 1051.

[k] *Ibid.* vol. lxxiv. pp. 899, 1094, 1104. In the year 1847, during Lord John Russell's administration, a Ten Hours' Factory Bill was carried. It was treated by the Cabinet as an open question, ministers being divided in opinion as to the policy and expediency of the measure. Knight, Pop. Hist. of Eng. vol. viii. p. 552.

[l] Hans. Deb. vol. clxxxiii. pp. 1348, 1589. But see the similar course taken by Earl Derby's government in 1858, when Capt. Vivian carried a resolution for the reorganisation of the War Department. *Ibid.* vol. cli. pp. 555-563.

[m] See Homersham Cox, History of the Reform Bills of 1866 and 1867.

A similar excuse may be urged in extenuation of the proceedings which took place in the House of Commons in the following session, upon the Scotch and Irish Reform Bills.[a] Upon this occasion a new element of confusion was added, namely, that ministers, having obtained permission from the Queen to dissolve Parliament upon the question of the Irish Church, were practically debarred from making their appeal to the constituent body until the Acts for enlarging the representation of the people should have gone into operation. This involved a delay of several months, during which time they retained office without being able to insure the adoption of their measures by Parliament, and were compelled to submit to a far more extensive alteration of those measures than was consistent either with the respect due to their position as ministers of the crown, or with the healthy action of parliamentary government.[b] These anomalous proceedings, it may be hoped, will not be again repeated, else they must inevitably lead to the destruction of the most important securities against the abuse of power, either on the part of ministers, or of the House of Commons, which are afforded by our present political system.

Important Bills brought in by private members;

Adverting to the privilege of private members to take the initiative in all matters of legislation, it was contended by Sir Robert Peel, in 1844, that 'individual members of Parliament had a perfect right to introduce such measures as they thought fit, without the sanction of the government.'[c] Again, in 1850, Sir Robert Peel urged the propriety of affording to private members an opportunity of inviting consideration to great questions of public interest, but nevertheless agreed that it was an excellent principle that the duty of preparing measures of legislation in all such cases should be undertaken by the ministers of the crown.[d]

but never passed without consent of ministers.

Numerous precedents can indeed be adduced of the introduction of important public Bills by private members; but unless with the direct consent and co-operation of ministers, they have never obtained the sanction of both Houses of Parliament.

Thus, in 1838, on a private member moving for leave to bring in a Bill for the provisional government of New Zealand, objection was taken by Mr. C. W. Wynn (an eminent constitutional authority)

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[a] See *post*, p. 411.
[b] See Park's Dogmas, p. 40.
[c] Hans. Deb. vol. lxxv. p. 475.
[d] Hans. Deb. vol. cviii. p. 974. And see Cox, Commonwealth, p. 133.

and others, that Bills of this description, or which might involve questions of international law, should be submitted to Parliament by the administration. In reply, the case was cited of the Bill to establish a colony in South Australia, which was brought in by a private member, though with the formal consent of the crown to the motion for its introduction. Whereupon Lord John Russell (the Home Secretary) gave the consent of the crown to the introduction of this Bill; reserving the right to ministers to support or oppose it at any future stage; and the Bill was accordingly introduced.[e] But being found to contain certain objectionable provisions it was opposed by ministers, and rejected on its second reading.[f]

In 1844, Lord Brougham brought in a Bill to codify the criminal law, urging in reply to objections by other peers, that 'he did not understand that there was any maxim of constitutional law which required that a Bill of this or of any other nature should be introduced by the government.'[g] But the Bill was dropped after its second reading.

In 1861, Mr. Locke King brought in a Bill for the extension of the county franchise, and Mr. Baines a Bill to extend the borough franchise; but both these measures were thrown out by means of the previous question upon the motion to read them a second time, being opposed by Lord Palmerston (the Prime Minister) on the ground that measures of such importance 'ought to originate with a responsible government, and not to be left in the hands of a private member to take their chance.'[h] And it was forcibly objected by another speaker, that a private member, however able, was responsible only to himself and those who sent him to Parliament, and his views were likely to be limited by the desires and circumstances of a small section of the community, so that it would be unreasonable to expect from such an one a broad and statesmanlike measure.[i]

On the other hand, an elaborate and important Bill to amend the law regarding the registration of county voters in Scotland, was submitted to Parliament, in 1861, by a private member, and though it was objected that a Bill which made an alteration in the constitution of the country ought to have been brought in by ministers, the Lord Advocate denied that this was necessary, or sound doctrine, and gave his cordial support to the Bill, which was agreed to by both Houses, and became law.[j]

In 1865, Mr. Whiteside introduced two Bills to regulate the Irish Court of Chancery, in opposition to a measure submitted to Parlia-

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[e] Mirror of Parl. 1838, pp. 4529–4532.

[f] *Ibid.* pp. 4914–4921.

[g] Hans. Deb. vol. lxxiii. p. 1600.

[h] *Ibid.* vol. clxi. pp. 610, 657.

[i] *Ibid.* vol. clxii. p. 382.

[j] *Ibid.* vol. clxiii. p. 599; Act 24 & 25 Vict. c. 83.

ment by ministers. But these Bills were withdrawn after their second reading.[k]

In 1866, Mr. Ward Hunt brought in a rival Bill to that of the government, on the subject of the Cattle Plague, which he succeeded in passing through the House of Commons. But the Bill was subjected to such extensive amendments in the House of Lords that its former supporters declined to adopt it, and it was ultimately rejected, upon the question for the consideration of the Lords' amendments.[l]

On March 1, 1867, a conversation took place in the House of Commons with reference to the law of master and servant. In the previous session, a select committee had been appointed to consider this subject, which had reported that the present state of the law was objectionable, and had advised certain specified changes therein. It being admitted that a change was necessary, the question arose by whom it should be made. It was urged that the matter was too important to be dealt with by a private member, and should be undertaken upon the responsibility of the government. Whereupon Mr. Walpole (the Home Secretary) stated that he was in communication with the Attorney-General on the subject, and hoped to be able to bring in a Bill in relation thereto as soon as the great pressure of government business would permit.[m]

On April 9, 1867, a private member moved for leave to bring a Bill into the House of Commons to amend the representation of the people in Ireland. The Secretary for Ireland (Lord Naas) said, that the government did not object to the introduction of this Bill, as it was desirable that the House should see the scheme which had been framed by so experienced a member. But he reserved the right to express his opinion on the measure until a future occasion. The Bill was then presented, and read a first time.[n] On June 28, however, the Bill was withdrawn.

On May 15, 1867, on motion for the second reading of a Bill, introduced by a private member, to remove certain anomalies and abuses in the laws relating to grand juries in Ireland, a debate arose, in which the opinion was generally expressed 'that the subject was too large to be dealt with in a satisfactory manner by an independent member.' Accordingly the mover, agreeing in this opinion, obtained leave to withdraw the Bill, giving notice, that, early in the following session, he would appeal to the Secretary for Ireland 'to assist in legislating on this important subject.'[o]

On April 29, 1868, a Bill to establish county financial boards,

[k] Hans. Deb. vol. clxxx. *Index*, 'Court of Chancery (Ireland).'

[l] *Ibid.* vol. clxxxi. p. 383; vol. clxxxii. p. 263. Annual Register, 1866, pp. 20–26.

[m] *Ibid.* vol. clxxxv. pp. 1259–1262.

[n] *Ibid.* vol. clxxxvi. p. 1353.

[o] *Ibid.* vol. clxxxvii. pp. 592–600.

and for the assessing of county rates, and for the administration of county expenditure for England and Wales, which had been brought in by a private Member, and read a first time, came up for a second reading. But it was moved by a member of the administration that in lieu of proceeding with this Bill a select committee should be appointed to enquire into the whole subject, upon whose report the government might be enabled hereafter to introduce a more satisfactory measure. With this understanding the motion was agreed to, on a division.[p] The select committee reported in favour of the adoption of a system of financial boards, partly elective and partly magisterial, whereby the county finances could be placed more directly under the control of the ratepayers.[q] This recommendation will probably be carried out, at an early period, by the new Reformed Parliament.

Advantages of free discussion in Parliament.

But, although it is the especial duty of ministers of the crown to prepare and submit to Parliament whatever measures may be required for the defence of the empire, the support of the civil government, or to amend or otherwise improve the fundamental or constitutional laws of the realm—and to control by their advice and influence all public legislation which is initiated by private members—a most useful purpose is served by the free investigation and debate in Parliament of every question affecting the community at large.

It is not, in fact, the primary duty of either House to pass the measures of the executive, but rather, as the great council of the nation, to advise the crown as to the way in which the public service may be most beneficially conducted, and to give expression from time to time to enlightened opinions upon the various topics which are attracting public attention.[r] This function cannot be fulfilled except by granting to private members adequate opportunity for introducing to the notice of Parliament projects for effecting desirable reforms in our political or

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[p] Hans. Deb. vol. cxci. pp. 1542–1559. And see the debate on the County Courts (Admiralty Jurisdiction) Bill, introduced in 1868 by a private member, but proceeded with by consent of ministers.—*Ibid.* vol. cxcii. pp. 161–171.

[q] Commons' Papers, 1867–8, No. 421.

[r] Mr. Disraeli, Hans. Deb. vol. clxi. p. 163.

social system, and by facilitating the discussion of such measures until public opinion is sufficiently agreed upon them to render legislation not only safe but expedient, when it will become the duty of ministers of the crown to assume the responsibility of advising the passing of Bills in Parliament to give effect to the same. Nearly all the great reforms which have received the sanction of Parliament during the present century have originated in this manner.[s]

Instances have indeed occurred in our political history wherein a majority of the House of Commons, acting contrary to the advice of the existing administration, have demanded the immediate settlement of some great political reform in a certain way, bringing to bear upon the ministers of the crown a pressure in relation thereto, which they have been unable to withstand. It has then been optional with the ministry either to render assistance in carrying out the proposed reform, provided the consent of the sovereign could be obtained, or else to resign and give place to others, through whose efforts such legislation might take place upon the particular question as would conciliate the good-will of the several estates of Parliament. The repeal of the Test and Corporation Acts in 1828, and the settlement of the long-pending question of Roman Catholic emancipation in 1829—to both of which measures the ministry then in power were at first opposed—were actually accomplished with the consent and co-operation of ministers themselves.[t] On the other hand, the resistance of ministers to a reform of Parliament led, in 1830, to their enforced resignation, and to the appointment of another ministry pledged to succeed upon the question.[u]

The will of Parliament ultimately prevails.

The repeal of the corn laws, in 1846, affords an illustration of a different principle, and shows what can be

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[s] Hans. Deb. vol. clxi. pp. 160, 161, 389–402.
657; vol. clxii. p. 353.
[t] See May, Const. Hist. vol. ii. pp. p. 117.
[u] *Ibid.* pp. 347–350. *Ante*, vol. i.

Sir R. Peel and the Corn Laws.

done by a bold and determined minister who views the exigencies of the State with sagacity and resolution. No such measure had been demanded by either House of Parliament, for the Lords were staunch protectionists and the majority of the Commons had been elected as the opponents of free trade. Sir Robert Peel himself had been hitherto the great champion of the protectionist party. Nevertheless, being convinced that the time had come when the national interests required the abrogation of the corn laws, he assumed the responsibility of advising their repeal, and, after a severe struggle, succeeded in obtaining the consent of his colleagues in office (the crown being neuter upon this question), and of both Houses of Parliament to his Bill.[v]

The position of ministers of the crown in relation to important Bills brought in by opposition members will be further elucidated by the following recent precedents.

Irish Church question.

On May 14, 1868, Mr. Gladstone (the leader of the Opposition), having obtained the sanction of the crown to an address passed by the House of Commons, that the interests of the crown in the temporalities of the Irish Church should be placed at the disposal of Parliament, with a view to prevent by legislation the creation of new personal interests, through the exercise of any public patronage,[w] brought in a Bill to prevent, for a limited time, any new appointments to that church, which was received and read a first time. The second reading was agreed to, on May 22, by a majority of fifty-four, in spite of the most strenuous opposition by the ministry.[x] In committee on this Bill a clause was inserted, notwithstanding objections urged by Mr. Gladstone, to the effect that the right of any person to share in the future Maynooth grant, or the *Regium Donum*, should be subject to the pleasure of Parliament.[y] Finally, the Bill passed the House of Commons, but on June 29, the motion for its second reading was negatived, in the House of Lords, by a majority of ninety-five.[z]

Votes of revenue officers.

On June 30, 1868, a Bill to remove the disabilities of revenue officers from voting at parliamentary elections was committed, and ordered for a third reading in the House of Commons, on division, notwithstanding the opposition of the Chancellor of the Exchequer,

[v] *Ante*, vol. i. pp. 140–143.
[w] Hans. Deb. vol. cxcii. p. 113.
[x] *Ibid.* p. 809.
[y] *Ibid.* pp. 1187–1211.
[z] *Ibid.* vol. cxciii. p. 298.

and of Mr. Gladstone, the leader of the Opposition. But, in deference to the opinion of the House of Commons, the government decided to withdraw their opposition to this measure, whereupon the second reading in the House of Lords was advocated by the Lord Chancellor, and the Bill became law.[a]

Church rates.

In 1866, Mr. Gladstone, then being Chancellor of the Exchequer, and leader of the government in the House of Commons, brought in a Bill for the compulsory abolition of church rates, which was read a first time. Before the day fixed for the second reading, the ministry went out of office. Naturally, upon such occasions the measures of the outgoing administration are either formally withdrawn or allowed to drop. But Mr. Gladstone, who had now become leader of the opposition, determined to proceed with this Bill, alleging that in his opinion, and in that of his late colleagues, it stood in a position different from other measures, 'inasmuch as it was originally a proposal not made by the late administration, but by myself, on my own individual responsibility.' Nevertheless, it had been distinctly introduced into the House as 'a government measure,' and other members of the government, in addition to Mr. Gladstone, were ordered 'to prepare and bring it in.' The new ministry, however, after Mr. Gladstone's explanation, consented to the second reading of the Bill, upon the understanding that they did not accept the principle of it, and that it should not be proceeded with any further during the session.[b] The Bill was accordingly dropped.

Supply votes to be initiated by the Crown.

All motions for the grant of money for the public service, or for imposing any pecuniary charge upon the people, must, as we have already seen, emanate from ministers of the crown in the House of Commons. By new standing orders passed in 1866, and which are more stringent than those previously in force, private members are effectually debarred from initiating such proceedings, unless with the recommendation of the crown.[c]

On June 6, 1867, a case occurred which shows that the House is disposed to construe these new standing orders very strictly. A private member, being desirous of moving a series of resolutions, to require certain charges relating to courts of law to be defrayed out of the Consolidated Fund, and not subjected to an annual vote, obtained the formal assent of the crown thereto, which justified

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[a] Hans. Deb. cxciii. pp. 389–410, 1080. Act 31 & 32 Vict. c. 73.

[b] Hans. Deb. vol. clxxxiii. p. 619; vol. clxxxiv. pp. 1029-1032.

[c] See *ante*, vol. i. pp. 428–433.

him, as a matter of form, in proceeding with his resolutions. But afterwards, at the suggestion of Mr. Ayrton, the mover agreed 'that, as a matter of policy, it was better that any resolution placing a charge upon the Consolidated Fund should be moved by a minister of the crown, and should not proceed from the Opposition side of the House.' He therefore abstained from moving such of the resolutions as were of that character, and confined himself to introducing 'resolution four, that the salaries and expenses therein specified should cease to be charged on the Consolidated Fund. That was a resolution diminishing the charge on the public, which any member might move.'[d]

Ability of ministers to pass their measures.

The rules of the House of Commons, as will be presently noticed, afford to an administration ample opportunity for inviting the attentive consideration of Parliament to whatever measures they may think fit to propose. But their ability to carry them successfully through both Houses must wholly depend upon the extent to which they possess the confidence of Parliament, and especially of the Lower House. An adequate degree of parliamentary support is essential, not merely to the continuance in office of the ministers of the crown, but also to the integrity and usefulness of their legislative measures. If they cannot rely upon being able to pass their Bills, at all events without substantial alteration, they will naturally refrain from bestowing the necessary pains to render them perfect and complete; and thus either the statute-book will be encumbered with crude and imperfect laws, or else the duty of framing desirable measures will pass out of the hands of the responsible servants of the crown, and will be assumed by men who merely represent the will and opinions of a popular assembly, to the manifest detriment of the public interests, and in violation of the foundation principles of parliamentary government.[e]

Twice, within the past ten years, the executive government have had recourse to the unusual proceeding of

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[d] Hans. Deb. vol. clxxxvii. p. 1667.

[e] See Mr. Disraeli's speech on the Business of the Session, August 30, 1848, Hans. Deb. vol. ci. especially pp. 704–707. Mr. Lowe's speech, February 25, 1867, *ibid.* vol. clxxxv. pp. 958, 960. Disraeli's Lord Geo. Bentinck, fourth edit. p. 573.

inviting the House of Commons to assist them in determining upon the leading principles whereon particular Bills should be framed, which were of the highest importance in a constitutional point of view, but in regard to which successive administrations had failed to propound a policy acceptable to Parliament. The course adopted by ministers upon these occasions was to submit to the House, in committee of the whole, certain general resolutions, which, after they had been altered by the committee in accordance with the prevailing opinions of the majority, became the framework of a Bill, which was introduced as a ministerial measure. A proceeding of this kind, however, is at variance with the principle of ministerial responsibility, and can only be justified on grounds of public necessity.

Government Bills based on general resolutions.

The first case of this description occurred in 1858, in regard to the government of India. On February 12, 1858, a Bill to transfer her majesty's possessions in India to the government of the British crown was laid before the House of Commons by the Prime Minister, Lord Palmerston, but before its second reading a change of ministry took place. The question was then taken up by Mr. Disraeli, the new Chancellor of the Exchequer, who on March 26 introduced a Bill for the same purpose, though differing materially in the method for effecting the object. Neither of these measures found favour with Parliament, or with the public. Whereupon, on April 12, Lord John Russell, 'with considerable doubt and hesitation,' suggested another course, namely, that instead of persevering with their Bill, ministers should consent to have the whole subject discussed in committee of the whole, upon general resolutions, so that there might be conclusions arrived at between the government and the House of Commons as to the basis upon which the Indian Government Bill should be founded. He referred to a former proceeding in 1813 as a precedent for this proposal, but it was shown by other speakers that this case was inapplicable, inasmuch as a preliminary committee was then required, in compliance with the standing orders concerning trade. Mr. Disraeli, however, promptly acceded to Lord John Russell's suggestion, and even invited his lordship to propose the resolutions. But the sense of the House was against a matter of such importance being taken up by an independent member.[f] Accordingly, a few days afterwards, Mr.

India Government Bill.

[f] Hans. Deb. vol. cxlix. pp. 858–877.

Disraeli laid upon the table of the House fourteen resolutions, distinctly embodying the outline of a legislative measure, which differed considerably from the original ministerial Bill. After much debate in committee, five only of these resolutions were reported to the House on June 17, the remaining resolutions having been withdrawn. A new Bill was then introduced by Mr. Disraeli, in conformity with the scheme agreed to by the House, which was passed into a law.[g]

Reform Bill.

The next attempt to obtain the sanction of the House of Commons to this method of originating a government measure was in 1867, in relation to the reform of Parliament. But this time the resolutions proposed were open to more serious objection, on account of their vague and indefinite nature, and meeting with resolute opposition from the House itself the ministry abandoned them, and brought in a regular Bill instead. The circumstances were as follows:—

The Russell administration resigned office in 1866, from their inability to induce the House of Commons to accept their proposed Reform Bill. They were succeeded by the Derby ministry, who, being themselves divided in opinion as to the proper basis for any such measure, determined at the outset not to proceed by Bill, but by introducing a series of resolutions, through which they 'hoped to elicit from the House of Commons the views they took upon the main questions which would be necessarily involved in any Reform Bill.' It was admitted that 'the resolutions were somewhat vaguely and indistinctly drawn;' but the object was 'not to pledge the government to a specific point upon any one of those resolutions, but to endeavour to obtain the general opinion of the House of Commons as to what measures would be likely to meet with a general assent.'[h] On February 11, 1867, Mr. Disraeli (the Chancellor of the Exchequer) moved that the House of Commons should on a certain day resolve itself into a committee of the whole to consider of the original Reform Act; proposing to submit to this committee thirteen resolutions on the subject of Reform. But on the day named, when Mr. Disraeli moved that the House should go into committee on these resolutions, it was objected that they 'were simply abstract propositions,' conveying 'no definite idea whatever,' and depending altogether upon details not yet made known as to their actual operation. It was furthermore asserted to be 'the duty of the executive government to give advice to this House, to initiate its business, and to decide on what propositions shall be brought forward on important public occasions:' while 'it is the business of the House to decide on the acts of the executive

[g] Hans. Deb. *in loco.* Annual Register, 1858, chaps. iii. and iv.

[h] Earl of Derby, Hans. Deb. vol. clxxxv. p. 1285.

government, and if it does not approve them to censure them. If the House allows itself to be induced to take a consultative position —if it begins a measure which government ought to begin, and allows itself to be asked questions, and to give its views to the government, the House will be taking away the responsibility of the ministers of the crown.'[1] On the following day, Mr. Disraeli informed the House that ministers had determined not to press their resolutions, but to bring in a Reform Bill as speedily as possible. This decision gave general satisfaction, and forestalled an intended motion of Mr. Gladstone to the effect that a discussion of the proposed resolutions must have tended to delay the practical consideration of the question, and that it would be for the public advantage that the government plan should be submitted to the House in a definite form.[j]

Changes in Reform Bill to make it acceptable to Parliament.

The new Reform Bill was submitted to the House of Commons by Mr. Disraeli on February 25; but being too restricted in its extension of the franchise to the working classes, it failed to satisfy the House. Without waiting for any direct vote upon the question, the government withdrew this Bill, and on March 18 introduced another of a more liberal character. This measure had, it appears, already engaged the attention of the cabinet, but being disapproved of by three prominent and influential ministers, it had been laid aside in favour of the one first presented to the House. Its resuscitation led to the resignation of these ministers, but their places were filled up, and the Bill proceeded upon. During its progress through the House of Commons, the ministerial measure encountered a formidable opposition, and was subjected to numerous and important amendments; but was finally passed on July 15. After a narrow escape, owing to further amendments which were inserted in the Bill by the House of Lords, to which the Commons refused to agree, it became law; materially altered, indeed, from the original draft agreed upon by the ministers, in some respects contrary to their advice and approval, but not so as to induce them to abandon the charge of it, or to be unwilling to hold themselves responsible for it.[k]

Private Bills.

It will be observed that the peculiar responsibility which attaches to ministers of the crown in matters of legislation is confined for the most part to the initiation and control of public business. As regards Private Bills, wherein the rights of private parties are adjudicated upon by Parliament in a semi-judicial manner, an opposite

[1] Mr. Lowe, *ibid.* p. 960. And see Earl Grey's observations, *ibid.* pp. 1294–1298.

[j] *Ibid.* pp. 1021, 1022.

[k] Hans. Deb. Session 1867. Cox, Hist. Reform Bills of 1866 & 1867, chapters vi.–xix.

Position of ministers towards Private Bills.

principle prevails. Thus, it was remarked by Sir Robert Peel, when Home Secretary in 1830, in reference to the Rye Harbour Bill, then pending in Parliament, 'I must decline interference with any private Bill, and I cannot but think, from the experience of every day, that the principle on which ministers abstain from any such interference is most salutary.'[l] Again, it was stated by the Chancellor of the Exchequer (Mr. Baring) in 1840, that 'it is contrary to all established practice for ministers of the crown to give an opinion upon a private Bill.'[m] For this reason, as well as on account of their pressing official duties, the occupants of the Treasury bench are exempt from serving on Private Bill Committees.[n]

But if an attempt should be made to infringe upon the established rules of Parliament by urging the House to permit a private Bill to proceed, notwithstanding the report of the committee on standing orders against it, it would be 'usual for the Vice-President of the Board of Trade, or some other member of the government, to support the general authority of committees of the House.'[o] So also if the interests of the public were likely to be injuriously affected by a private Bill, ministers would be justified in using their influence to oppose it;[p] because they are responsible for exercising the prerogative of the crown so as to control all legislation in Parliament, whether upon public or private matters, for the furtherance of the public welfare.

Legislative rights of the Crown.

Since the establishment of parliamentary government, the crown has ceased to exercise its undoubted prerogatives, as an essential part of the legislature, by the direct personal intervention of the sovereign. Its legislative powers are now effectually put forth in both Houses, and especially in the House of Commons, by means of responsible ministers, who, availing themselves of the

[l] Mirror of Parlt. 1830, p. 2009.
[m] *Ibid.* 1840, p. 4057.
[n] Hans. Deb. vol. clxxv. p. 1545.
[o] Sir R. Peel, *ibid.* vol. lxxx. p. 177.
[p] Case of the Mersey Conservancy.

influence which they possess as members of Parliament, serve as the mouthpiece and representatives therein of the monarchical element in our constitution.[q] Contemporaneously with the introduction into our political system of the constitutional usage whereby the sovereign abstains from exercising direct and external authority over the Houses of Parliament, in matters of legislation, we find the modern machinery for the control of legislation on behalf of the crown coming into play. The last occasion upon which an English sovereign vetoed a Bill presented for the royal assent was in 1707,[r] whilst the first resolution of the House of Commons, to forbid the reception of petitions for grants of money without the consent of the crown, was agreed to in the previous year.[s] Thenceforth, the rules of Parliament, which prohibit the introduction of a Bill to appropriate any portion of the public revenue, except at the recommendation of the crown, through a responsible minister,—and which require the consent of the crown before either House can agree to a Bill affecting the royal prerogative,[t]—together with the admitted right of ministers, so long as they retain the confidence of the House of Commons, to regulate the course of public business—have secured the rights of the sovereign, as a constituent part of the legislative body, as unmistakeably, if not more effectually than by the direct interposition of a personal veto.

'The authority of the crown in England,' says Lord Derby, 'does not depend upon the veto which her Majesty theoretically possesses to impose upon Acts of Parliament after they have passed, but upon the right and proper influence which she exercises over her ministers, and through them, over both branches of the legislature, which gives her the opportunity of exercising her

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and Docks Bill, *ibid.* vol. cxlvii. pp. 15-19.

[q] See *ante*, vol. i. pp. 7, 8, 249; Park's Dogmas, p. 126.

[r] See Hearn, Government of England, p. 61.

[s] *Ante*, vol. i. p. 429.

[t] *Ibid.* and *ante*, p. 298.

judgment upon measures before they have been submitted to Parliament, not after they have received its assent.'[u] To the same effect, Lord Palmerston states that it is 'a fundamental error' to suppose that 'the power of the crown to reject laws has ceased to exist.' 'That power survives as before, but it is exercised in a different manner. Instead of being exercised upon the laws presented for the royal assent, it is exercised by anticipation in the debates and proceedings of the two Houses of Parliament. It is delegated to those who are the responsible advisers of the crown; and it is therefore not possible that a law passed by the two Houses should be presented to the crown, and should then by the crown be refused. And why is this? Because it cannot be imagined that a law should have received the consent of both Houses of Parliament, in which the responsible ministers of the crown are sitting, debating, acting, and voting, unless those who advise the crown have agreed to that law, and are therefore prepared to counsel the sovereign to assent to it. If a law were passed by the two Houses against the will and opinion of the ministers of the day, those ministers must naturally resign their offices, and be replaced by men in whose wisdom Parliament reposed more confidence, and who agreed with the majorities in the two Houses.'[v]

Royal Veto on Bills;

But, if need be, the dormant power of the crown to veto a bill presented by the two Houses of Parliament for the royal assent could be revived and exercised;—provided only that a ministry could be found to assume the responsibility of such an act—for 'her Majesty has no constitutional right to abdicate that part of her prerogative which entitles her to put a veto upon any measure she thinks fit.'[w] And 'although no minister can introduce a measure into either House without the

[u] Hans. Deb. vol. cxxxiv. p. 839.
[v] Hans. Deb. vol. clix. p. 1386; and see Hearn, Govt. of England, pp. 60-64.
[w] Mr. Secretary Hardy, Hans. Deb. vol. cxcii. p. 732.

consent of the crown, such consent is only given in the first instance in the executive capacity of the sovereign. It implies no absolute approbation of the measure, but merely signifies the royal pleasure that the two branches of the legislature should consult upon the merits of the case. As a branch of the legislature whose decision is final, and therefore last solicited, the opinion of the sovereign remains unshackled and uncompromised until the assent of both Houses has been received. Nor is this veto of the English monarch an empty form. It is not difficult to conceive the occasion, when supported by the sympathies of a loyal people, its exercise might defeat an unconstitutional ministry, and a corrupt Parliament.'[x]

threatened to be exercised in 1858.

A remarkable case, illustrative of this doctrine, occurred in 1858, in relation to the Victoria Station and Pimlico Railway Bill, which affected certain rights of property vested in the crown. The First Commissioner of Public Works (Sir Benjamin Hall) had consented to the measure, but during its progress through Parliament a change of ministry took place, and the new Commissioner (Lord John Manners) insisted upon a particular alteration of the scheme, to which the applicants for the same were unwilling to agree. But the House of Lords, before whom the Bill was pending, granted leave to the Commissioners of Public Works to be heard by counsel against the Bill, and it being intimated that unless it were altered the government would advise the crown to veto it, the committee amended the Bill in accordance with the views of the First Commissioner, and it received the royal assent.[y]

Legislative powers of the Lords.

Under ordinary circumstances, however, if ministers should be unable to prevent the passing of a measure through the House of Commons to which they were opposed, they would take advantage of the co-ordinate and independent legislative powers of the Second Chamber, wherein the obnoxious Bill might be rejected, or amended in conformity with their views, or so as to conciliate the favour of the contending parties. Less under the influence of popular passion, or transient political

[x] Disraeli's Lord George Bentinck, 4th ed. p. 65.

[y] Hans. Deb. vol. cli. pp. 586–589, 692, 797. Lords' Journals, vol. xc. p. 362.

excitement than the House of Commons, the Lords often interpose successfully to strengthen the hands of ministers of the crown, by hindering, for a time at least, the adoption of measures which may reasonably be regarded with mistrust or apprehension.[z] Otherwise, and as a last resort before the Bill has gone through both Houses, an appeal must be made to the constituent body, which, if it should result in an unmistakeable expression of public opinion in favour of the particular measure, will ultimately lead to its acceptance by the crown.[a]

Appeal to constituent body.

(c.) The oversight and control of Business in Parliament.

Ministerial lead in both Houses.

Ministers of the crown are constitutionally responsible, not merely for the preparation and conduct of legislative measures through both Houses of Parliament, and for the control of legislation which is undertaken by private members, but also for the oversight and direction of the entire mass of public business which may come before either House. Nothing should be left to the will and caprice of a fluctuating majority, but the efforts of ministers should be continually directed to the furtherance of business in Parliament, in such manner as will best promote the public interests, and ensure the convenience of members generally. For ministers are the natural leaders in both Houses, as well as the proper guardians of the powers and privileges of Parliament. Representing therein the authority of the crown, and exercising therein the influence which appertains to them in that capacity, it is their duty to regulate the performance of all parliamentary functions, so as to keep them within proper limits, and in a steady course.[b]

In 1692, before William III. had constructed his first parliamentary administration, a formal complaint was

[z] See *ante*, vol. i. p. 28; also the case of the Forgery Punishment Bill, *ante*, p. 302, and that of the Irish Church Suspensory Bill, *ante*, p. 310; and Hans. Deb. vol. cxciii. pp. 975, 1067.

[a] See Bowyer, Const. Law, p. 165.

[b] Hearn, Govt. of England, p. 536. Mr. Gladstone, Hans. Deb. vol. cxcii. p. 1190-1194.

made by ministers to the king, that 'nobody knew one day what the House of Commons would do the next,' and that 'it were perhaps too confident a thing for anyone to pretend to say the parliament will or will not do anything whatsoever that may be proposed to them.'[c] The present highly organised system of parliamentary government has been elaborated by the wisdom and experience of successive generations, in order to remedy this evil condition, and to establish harmony and unanimity between the crown and Parliament. Now-a-days, immediately upon the formation of a ministry, it assumes, in addition to the ordinary duties of an executive government, other and more important functions—unknown to the theory of the constitution—namely, the management, control, and direction of the whole mass of political legislation, by whomsoever originated, in conformity with its own ideas of political science and civil economy; and so long as it commands the confidence of the House of Commons, it should be able to prevent the adoption by Parliament of any measure, which, in the judgment of ministers, is inexpedient or unwise.[d] Advantages of this practice.

In view of the great and increasing amount of public business which is now undertaken by ministers of the crown, successive parliamentary committees have advised the adoption of rules to facilitate the distribution and disposal thereof by the government; and the House of Commons has always evinced the utmost readiness in furthering the public business in the hands of ministers, so far as is compatible with the rights and privileges of private members.

A select committee of the House of Commons on public business, in 1848, concluded a report containing numerous valuable suggestions, which were afterwards incorporated into the practice of the House, by expressing their

[c] Dalrymple, Memoirs of Great Britain, 2nd ed. vol. ii. App. part ii. p. 240; and see Macaulay, Hist. of Eng. vol. iv. p. 433; vol. v. p. 168.

[d] Park's Dogmas, p. 39.

Conduct of business by ministers.

belief 'that by the careful preparation of measures, their early introduction, the judicious distribution of business between the two Houses, and the order and method with which measures are conducted, the Government can contribute in an essential degree to the easy and convenient conduct of business. They trust the efforts of the Government would be seconded by those of independent members, and that a general determination would prevail to carry on the public business with regularity and despatch.'[e]

A similar committee of the House of Commons, appointed in 1861, directs attention in their report to the large proportion of the public business transacted in Parliament, which is now devolved on the ministers of the crown; and proceeds to state, that 'although it is expedient to preserve for individual members ample opportunity for the introduction and passing of legislative measures, yet it is the primary duty of the advisers of the crown to lay before Parliament such changes in the law as in their judgment are necessary; and while they possess the confidence of the House of Commons, and remain responsible for good government, and for the safety of the state, it would seem reasonable that a preference should be yielded to them, not only in the introduction of their bills, but in the opportunities for pressing them on the consideration of the House.'[f] The committee accordingly advised that more time should be granted for the consideration of government orders—a recommendation which was concurred in by the House.

Government days.

By the present standing orders of the House of Commons, Monday, Thursday, and Friday in each week are set apart for government orders; Wednesday for orders of the day, originating with independent members, and Tuesday for notices of motions. At the close of a session, Tuesday and Wednesday are also appropriated when necessary, for orders of the day, government orders

[e] Commons' Papers, 1847-8, vol. xvi. p. 146.

[f] *Ibid.* 1861, vol. xi. p. 436.

having the priority; and morning sittings are sometimes resorted to for the purpose of furthering the public business.[g]

Government orders.

The leader of the House of Commons is at liberty to arrange the order of business appointed for government nights as he thinks fit, it being provided by a standing order of the House that 'the right be reserved to her majesty's ministers of placing government orders at the head of the list, in the rotation in which they are to be taken, on the days on which government bills have precedence.'[h] This privilege, however, should be exercised with the most 'perfect courtesy, and the most impartial fairness,' and with a due regard to the general feeling of the House.[i]

On April 30, 1868, when Mr. Gladstone brought in his resolutions for the disestablishment of the Irish Church, upon which he defeated the Government, fearing that ministers would not allow him a proper opportunity for proceeding thereon, he gave notice that on the next government day, at half-past four o'clock, he should move that the standing order above mentioned should be suspended, and the other orders of the day be postponed, until after the order of the day for the committee to consider his resolutions. But as Mr. Disraeli undertook that ample opportunity for the discussion of this question should be afforded the motion was not made.[j]

Motions by private members.

But no control is conceded to ministers over orders in the hands of private members, which are governed by the ordinary rules of Parliament. Moreover, any private arrangement intended to permit an independent member to proceed upon a particular motion on a government night, would be liable to be overruled by the House; although, under ordinary circumstances, an engagement made by the leader of the House would be respected.[k]

[g] See May, Parl. Pract. ed. 1868, pp. 242-244. Hans. Deb. vol. cxcii. p. 1568.

[h] May, Parl. Pract. ed. 1868, p. 243; and see Hans. Deb. vol. clxxiv. p. 189; *ibid.* vol. cxc. p. 1200.

[i] Mr. Disraeli, *ibid.* vol. clxxxvi. p. 1319; vol. cxci. p. 1707.

[j] *Ibid.* vol. cxci. pp. 1680, 1706, 1716, 1745.

[k] Thus, in June 1863, Mr. Hennessey's arrangement with Lord Palmerston to debate a motion on the affairs of Poland on a government night was set aside by the House, and Lord Palmerston agreed to give him another day.—*Ibid.* vol. clxxi. pp. 899, 1253–1275.

Priority in speaking.

It is customary, in debates of the House, to allow priority to members of the administration who wish to speak;[l] and in all important debates, it is usual for the speaker to give preference, alternately, to the known supporters and opponents of the question;[m] and it would be considered irregular to interfere with the speaker's call in favour of any other member.[n] When many members desire to address the House, it is common for an arrangement to be made between the Government and the Opposition 'whippers-in' to afford a suitable opportunity for the several members to speak who wish to be heard.[o]

The Whippers-in, in the Commons.

The principal 'whipper-in' on behalf of the government is the parliamentary, or, as he is otherwise called, the Patronage Secretary of the Treasury, who is a very important personage. He is usually one of the tellers in great political divisions, and it devolves upon him, under the direction of the leader of the House, 'to facilitate, by mutual understanding, the conduct of public business,' and 'the management of the House of Commons—a position which requires consummate knowledge of human nature, the most amiable flexibility, and complete self-control.'[p] He is also responsible for 'making a House,' and for preventing a 'count-out' at unseasonable times.[pp]

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[l] Hans. Deb. vol. lxvii. p. 898.

[m] *Ibid.* vol. lxxvii. p. 866. May, ed. 1868, p. 297.

[n] Hans. Deb. vol. cliii. p. 839. But in disputed cases an appeal may be made to the House.—May, p. 295.

[o] Hans. Deb. vol. clxxxii. pp. 1972, 2173; *ibid.* vol. cxci. pp. 1422–1424. 'It is a necessary consequence of our parliamentary constitution, and the mode in which business in this House must be carried on, that generally discussion must be confined to a few what are called leading members; yet there are questions which sometimes arise, like the one concerning the maintenance of the Established Church in Ireland, on which it is not fair that the discussion should be confined to those gentlemen only.'—Mr. Disraeli, *ibid.* p. 1462.

[p] Disraeli's Lord George Bentinck, 4th ed. pp. 145, 314. Ritchie's Modern Statesmen (the Treasury Whipper-in), and Chambers' Journal, December 26, 1868 (the Whips). In the new House of Commons about to be erected, there will be private rooms contiguous to the chamber, for the use of the Secretary, and of the ex-Secretary, in addition to the room for the Cabinet ministers. It has also been proposed to provide rooms near to the House for the several departments of government, where their boxes and papers may be kept, and where ministers may transact business with their subordinate officers.—Rep. Com. Ho. Commons Arrangements, 1868, p. vi.

[pp] See *post*, p. 449.

As 'whipper-in,' the Secretary is generally assisted by two of the junior Lords of the Treasury. These useful functionaries are expected to gather the greatest numbers of their own party into every division, and by persuasion, promises, explanations, and every available expedient, to bring their men from all quarters to the aid of the Government upon any emergency. It is also their business to conciliate the discontented and doubtful amongst the ministerial supporters, and to keep everyone, as far as possible, in good humour.

The Opposition, likewise, have their 'whippers-in,' who perform similar services for their own party. They are usually gentlemen who have filled the like offices when their party was in power, or others selected by the chiefs of the Opposition for that purpose.

In the House of Lords, the Postmaster-General and the Master of the Buckhounds have generally been the ministerial 'whippers-in,' and for the Opposition, peers who have held, or expect to hold, similar offices are chosen.[q] In the Lords.

(*d.*) *The necessity for unanimity and co-operation amongst Ministers of the Crown upon the basis of party.*

The influence which is rightfully exercised by ministers of the crown in the Houses of Parliament depends, in the first instance, upon the degree of unity and of mutual co-operation they exhibit between themselves; and finally upon the amount of control they are able to exercise over the political party to which they belong. We have now to consider the mode in which these vital elements of ministerial existence are exemplified. Political unanimity of a ministry.

In tracing the origin and development of the rule which requires political unanimity amongst the ministers of the crown, we have seen that it has become an acknowledged principle that, so long as a minister continues to form part of a government, he shares with his colleagues an

[q] Private information from Sir Erskine May.

Of Cabinet ministers.

equal responsibility for everything that is done or agreed upon by them. Except in the case of an admitted 'open question,' it must be taken for granted that the whole Cabinet have assented to the ministerial policy as officially transacted or propounded by one of their number.[r] It is not therefore allowable for a Cabinet minister to oppose the measures of government—to shrink from an unqualified responsibility in respect to the same—to refrain from assisting his colleagues in the advocacy of their particular measures in Parliament[s]—or to omit the performance of any administrative act which may be necessary to carry out a decision of the government—even though he may not have been a consenting party thereto.[t] A minister who infringes any one of these rules is bound to tender his immediate resignation of office.

Of other ministers.

The responsibility of a minister who has no seat in the Cabinet is less comprehensive, although in its degree no less complete. Such an one is required to render active assistance in sustaining the policy of the government; and in carrying out, intelligently and faithfully, the instructions given him by his political chief. But his individual responsibility ends here. If called upon to represent the department to which he belongs, in either House of Parliament, he does so, strictly speaking, as the organ and mouthpiece of his official superior. He cannot be held answerable for a policy in the framing of which he has had no share. His responsibility is that of a subordinate, not of a principal, and mainly consists in an accountability for the efficient discharge of the duties assigned to him, in subjection to the acknowledged authority of the head of his department.[u]

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[r] See *ante*, p. 218; and see Mr. Gladstone's observation, quoted and endorsed by Earl Grey, 'that it is one of our first duties to decline to acquit any member of the Cabinet of responsibility for the announced and declared policy of another.'—Hans. Deb. vol. cxcii. p. 2057.

[s] Mr. Gladstone, in Hans. Deb. vol. clxviii. p. 176; and see *ibid.* vol. clxvi. p. 1388.

[t] Earl Grey, on the Jamaica debt, *ibid.* vol. clxviii. pp. 276, 280. Regarding differences of opinion between two or more administrative departments, see *ante*, p. 194.

[u] See *post*, p. 369; and Mr. Lowe's case, *ante*, vol. i. p. 267 note [p].

But questions will sometimes arise which, in the opinion of leading members of a government, are of too doubtful, delicate, or complex a nature to admit either of agreement or compromise, and yet which require an immediate settlement. Upon such questions, Cabinet ministers may agree to differ, and when brought before Parliament they are treated as 'open questions' to be advocated or opposed by individual ministers at their discretion. Open questions.

It is impossible to define, beforehand, what questions may properly be accounted 'open,' without detriment to the character of a ministry, or to its claims to the respect and confidence of Parliament. Since unanimity in the Cabinet has become an acknowledged rule, such great questions as Parliamentary Reform, the Ballot, the Abolition of the Slave Trade, Roman Catholic Emancipation, Free Trade, with other minor matters, have severally been considered as 'open questions' by some administrations, though not by others.[v]

But, however unavoidable they may be under certain exceptional circumstances, the multiplication of 'open questions' must be regarded as a great evil, as they tend to diminish the sense of individual responsibility, which ought to be keenly felt by everyone who is admitted to share in the government of the country. If all questions were open, and the minority in a ministry opposed, or refused to support the majority, few important measures could be carried; and the degrading spectacle would be exhibited of a government without a decided policy upon the grave political issues that are continually arising, and which need to be determined upon definite principles that can be understood and appreciated by the nation at large.[w]

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[v] Mirror of Parl. 1839, pp. 3067–3070; and see *ante*, vol. i. p. 146.

[w] Earl Grey, Parl. Govt. new ed. p. 116. See Macaulay's arguments in favour of open questions, Mirror of Parl. 1839, p. 3067; Sir R. Peel's arguments against them, *ibid.* 1840, p. 602; an article (probably written by Macaulay) refuting Sir R. Peel's opinions, Edinb. Review, vol. lxxi. p. 493; Lord John Russell, as to their being generally inexpedient, Mirror of Parl. 1840, p. 620; and see Lewis, on Matters of Opinion, ch. vii. 'On the applicability of the principle of authority to the decisions of political bodies.'

In proof of the growth and present development of constitutional practice on this subject, the following precedents may be cited :—

(1.) *As regards Cabinet Ministers.*

Cabinet ministers opposing government measures.

Lord Thurlow was Lord High Chancellor during the first administration of Mr. Pitt. From the commencement of this ministry, in 1783, he made himself very troublesome, asserting his own independence, persisting in a systematic and violent opposition to the measures of government, and never acting cordially with his colleagues. To such an extent did he carry his offensive conduct, that it was a saying of Pitt's, that in the Cabinet Thurlow 'opposed everything, proposed nothing, and was ready to support anything.'[x] The Prime Minister bore with him very patiently for a long time, in consideration of his extraordinary ability and fitness for his distinguished office, but at last found it necessary to invoke the aid of the king to compel his colleague to behave with more propriety. Accordingly, in 1789, Mr. Pitt wrote to his majesty, representing his difficulties, and stating how desirable it was that there should be complete cordiality between the members of the Cabinet. Upon this the king wrote to the Chancellor, and received such a reply as led him confidently to anticipate that Mr. Pitt would have no reason to complain again on the subject. For two or three years matters proceeded more smoothly, but after that time Thurlow began again to be very intractable. At ministerial dinners, where it was customary after the cloth was removed to enter upon discussions on state affairs, he would frequently refuse to express his opinion; and would sometimes withdraw to another part of the room and fall asleep. In parliament he was so unreliable that it became necessary to appoint another cabinet minister to act as leader of the government in the House of Lords. This made Thurlow very angry, and he opposed the government measures in the House of Lords more vehemently than ever. At length Mr. Pitt's forbearance was exhausted, and he wrote to the king, that his majesty must 'choose between his Prime Minister and his Chancellor, for that it was impossible they could continue any longer to act together. Notwithstanding his attachment to Thurlow, the king at once gave way, and caused a communication to be made to the Chancellor that 'his majesty had no longer any occasion for his services.'[y] The Great

[x] Campbell's Chancellors, vol. v. pp. 601*n*, 674. And see *ibid.* pp. 312, 474, 548.

[y] *Ibid.* vol. v. pp. 565, &c. 676. Stanhope's Pitt, vol. ii. p. 148. Adolphus, George III. vol. v. p. 234. In 1770, Lord Camden was dismissed from the Chancellorship for an attack upon his colleagues in the House of Lords. Campbell's Chancellors, vol. v. p. 283.

Seal was then put into commission, until the appointment of Lord Loughborough.

Since Mr. Pitt's day, a more stringent practice has prevailed; and it has become an established principle that when a member of the administration—whether he has a seat in the Cabinet or not—votes against his colleagues upon any government measure (not being an open question), he is bound to lose no time in affording to the Prime Minister 'an opportunity of placing his office in other hands, as the only means in his power of preventing the injury to the king's service which might ensue from the appearance of disunion in his majesty's councils.'[z] It is then optional with the head of the administration either to advise the sovereign to accept the resignation of his colleague, or to express his willingness to retain him in office, notwithstanding his opposition to a particular measure of the government.[a]

Must resign,

unless requested to remain.

Thus, when Lord Liverpool's Cabinet had agreed to commence proceedings against the consort of George IV., by a Bill of pains and penalties, for alleged adultery, Mr. Canning—who then filled the office of President of the India Board—declined to take any part in the proceedings against the queen, because he had formerly been employed as one of her confidential advisers. Whereupon he tendered his resignation of office, at a personal interview with the king. His majesty, however, by a letter through the Prime Minister, insisted upon Mr. Canning retaining his place; authorising him to follow his own judgment in respect to the queen, and to assign, if necessary, the king's express commands as the reason for his remaining in office. Mr. Canning yielded to the royal pleasure, and continued in the Cabinet for about six months longer; abstaining, the while, from all participation in the proceedings against the queen. But at the expiration of that time, it became apparent that

[z] Mr. Huskisson's letter of resignation, in Mirror of Parl. 1828, p. 1691.

[a] See the case of Lords Sidmouth and Ellenborough, who were specially invited to continue in the Grenville Administration, notwithstanding their opposition to any concession to the Roman Catholics, after the Cabinet had agreed upon a contrary policy. (Parl Deb. vol. ix. p. 396; *ibid.* vol. xxiii. p. 463.) In 1844, and again in 1867, the Lord Chancellor voted against his colleagues in the ministry upon a clause of a bill to confer certain legal patronage upon the Lord-Lieutenant of Ireland. Hans. Deb. vol. clxxxix. pp. 843, 1603.

discussions were likely to arise in the House of Commons upon the queen's case; and that the presence of Mr. Canning, as a minister in that chamber, if he took no part in the debate, would be productive of embarrassment both to himself and to his colleagues. He therefore again tendered his resignation, which the king, this time, regretfully accepted.[b]

In 1828, Mr. Huskisson, being then Secretary of State for the Colonies, voted against his colleagues upon the East Retford Disfranchisement Bill, in favour of a clause to transfer the forfeited franchise to Birmingham, in order to redeem a pledge which he had given on a former occasion. He immediately afterwards tendered his resignation of office, by letter to the Duke of Wellington (the Prime Minister), who accepted the same, and communicated the letter of resignation to the king. Mr. Huskisson, however, had expected that the Premier would urge him to remain in office, and was much chagrined with the duke for acting so promptly in the matter. He attempted some further explanations, through a friend, with the view of showing that his intention to retire from the ministry had been misunderstood. But the duke characteristically replied, 'It is no mistake, it can be no mistake, and it shall be no mistake.'[c]

(2.) *As regards Ministers not in the Cabinet.*

Opposition of subordinate ministers.

In February 1772, Mr. Fox resigned his seat at the Admiralty Board, chiefly because of his intention to oppose the Royal Marriage Act, a measure then in preparation, much desired by the king, but reluctantly adopted by his ministers. While the Bill was pending in Parliament, the king wrote to the Premier (Lord North), threatening his heavy displeasure to all in his service who should refuse to give it a hearty support.[d] In the following December, Fox was again in office, as a Junior Lord of the Treasury. But two years afterwards he was dismissed, for being insubordinate to his official superior, Lord North.[e]

In 1822, Mr. Huskisson, who was not then a cabinet minister, but held the office of First Commissioner of Woods and Forests, had felt it his duty to oppose his colleagues upon the Corn question, whereupon he lost no time in tendering his resignation to Lord Liverpool, the Prime Minister, but he was induced to withdraw it, and continue in office.[f] In 1829, Sir Charles Wetherall, being Attorney-General, opposed the Roman Catholic Relief Bill, which

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[b] Stapleton's Canning and his Times, pp. 290–318.

[c] Edinb. Review, vol. cx. p. 81.

[d] *Ibid.* vol. xcix. p. 5. Mahon, Hist. of Eng. vol. v. p. 469.

[e] Mahon, vol. v. p. 498.

[f] See Mirror of Parl. 1828, pp. 1689–1708. In like manner, the Rt. Hon. C. W. Wynn, after voting against his colleagues on the Alien

had been brought in as a government measure, and he was shortly afterwards removed from office, and Sir J. Scarlett appointed in his place.[g] In October 1831, Earl Howe was dismissed from his office as Lord Chamberlain to the queen, in consequence of his vote in opposition to the Reform Bill. Formerly, when the Reform question was before Parliament, he had intimated his intention of voting against it, and had placed his office at the disposal of the government, but had been requested to retain it, with a distinct recognition of his privilege to vote as he pleased, from the circumstance that he was attached to the queen's household, usually considered as being independent of party politics. On this occasion, however, Earl Howe had thought it unnecessary to communicate with the government touching his intended vote, and he was surprised when, upon the recommendation of ministers, his majesty removed him from office, in consequence of his vote against their policy.[h] In 1832, Sir H. Parnell, the Secretary at War, left the House before the division on a motion involving a censure upon ministers, notwithstanding that the strongest representations were made to him upon the nature of the question; whereupon he was removed from office, upon the unanimous recommendation of the Cabinet.[i] In 1849, Mr. Baines, the President of the Poor Law Board, voted against the government measure for the repeal of the Navigation laws, but the Prime Minister explained to the House of Commons that Mr. Baines had only accepted office conditionally that he should be allowed to vote as he thought fit upon this question.[j] Again, in 1854, upon another question, Mr. Baines felt it his duty to oppose his colleagues; but his proffered resignation was declined, on account of the high sense entertained of his public services.[k]

Strict discipline.

The strictness of discipline which is now observed amongst the subordinate ministers of the crown may be further illustrated by the following examples:—

In 1863, the Chief Secretary for Ireland, after writing to a member of the House of Commons, promising his assistance in passing a

Bill, and Lord Lonsdale, after a similar vote on the Roman Catholic question, were nevertheless continued in office. Hans. Deb. (3) vol. cii. p. 682.

[g] Mirror of Parl. 1829, pp. 675–683, 907.

[h] *Ibid.* Oct. 1831, pp. 3027, 3127. Corresp. Will. IV. with Earl Grey, vol. i. pp. 370–372. In a letter addressed to the Prime Minister before this occurrence, the king declared that 'he had not hesitated to discard from his household any individual, whether holding a superior or an inferior situation, who, being a member of either House, had withheld or stated his intention of withholding his support from the government upon the question of Reform.' (*Ibid.* vol. i. p. 291.) Being unable to vote for the Reform Bill, Lord Waldegrave resigned his situation of Lord of the Bedchamber. *Ib.* p. 360.

[i] Corresp. Will. IV. with Earl Grey, vol. ii. pp. 164, 173.

[j] Hans. Deb. (3) vol. cii. p. 681.

[k] *Ibid.* vol. cxxxii. pp. 72–80.

certain Bill, afterwards opposed the measure in Parliament, because 'the authorities in Ireland' disapproved of the measure.[l]

In 1866, Sir Roundell Palmer (Attorney-General), in debate on the Government Reform Bill, 'with respect to the Savings Bank Franchise in that measure, took the liberty of saying that he regarded it as "by no means the best part of the proposal of the Government,"'[m] which, as he afterwards remarked, 'was as much as saying that, as far as he individually could, he disapproved of it.' Commenting upon a similar proposition in the Reform Bill of the Derby Ministry, in 1867, Sir R. Palmer (being then in opposition) characterised it as 'utterly wrong in principle, and untenable and unsettling in practice.'[n]

Indiscreet language by ministers.

Cabinet ministers, however, do not hold themselves responsible for the language of subordinate members of the government.

Thus, in the debate on the Reform Bill, on September 21, 1831, the Solicitor-General for Ireland gave utterance to an unconstitutional dogma, in regard to the power of the crown, in conjunction with the House of Commons, to disfranchise boroughs, without reference to the House of Lords. This assertion occasioned great excitement, and ministers were called upon to disavow it. But the Chancellor of the Exchequer (Lord Althorp), while repudiating the sentiment, said he 'did not think it just, or fair, or candid, or according to the customs and usages of this House, to make the government responsible for any statement which may, in the course of a debate, be made by gentlemen who are not members of the Cabinet.'[o]

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[l] Hans. Deb. vol. clxxi. p. 382.

[m] *Ibid.* vol. clxxxiii. p. 1661.

[n] *Ibid.* vol. clxxxvi. p. 590.

[o] Mirror of Parl. 1831, pp. 2312-2315. Indiscreet or inaccurate language upon questions of public policy, if made use of by Cabinet ministers, may justly be made the subject of parliamentary criticism, but it would be more reasonable to call for explanations from the minister whose language is complained of, than to hold the head of the administration responsible for the same. See the comment upon the alleged discrepancy between the ministerial statements made by Mr. Disraeli in the House of Commons and the Earl of Malmesbury in the House of Lords, on May 4, 1868. (Hans. Deb. vol. cxci. pp. 1787-1814.) And see the references made to a speech by Mr. Gladstone, when Chancellor of the Exchequer, in the recess of 1862, upon American affairs, wherein he declared that President Davis had 'not only created an army, but made a nation,' an observation which was 'regretted' by his colleagues, and explained away to the United States Minister in London. *Ibid.* vol. clxxiii. p. 148; vol. clxxxii. p. 1164; vol. clxxxiii. p. 108. Lord Campbell says: 'It is remarkable that there is hardly any public man who has not, at some time or other, indiscreetly used some expression which has passed into a by-word against him.' He mentions the well-known instances of Lord Melbourne's 'heavy blow and great discouragement to the Church,' Lord John Russell's

In order to enable ministers to carry on the government in harmony and agreement with Parliament, without their being subjected to the degradation of becoming the mere tools of a democratic assembly, it is necessary that they should be sustained by an adequate majority in both Houses, and especially in the House of Commons. This advantage is ordinarily secured to them through the agency of party. Whichever political party predominates in the nation, and in the legislature, presumably selects its best men to be its leaders and representatives. The sovereign having chosen from amongst such those whom she is willing to appoint to be her councillors and administrators, the interests of party and of the state alike demand that they should receive from Parliament a generous support; and that so long, at least, as the House of Commons continues to repose confidence in them, they should be permitted to advise and influence the deliberations of Parliament, with the authority that belongs to their office as Ministers of the Crown. Relying upon the judgment and discretion of the men to whom both crown and Parliament have agreed that the direction of public affairs should be entrusted, the legislative chambers should be willing to receive with favour whatever measures the ministry may deem it expedient to submit for their sanction; and they should be slow to impede or interfere with the action of ministers in executive matters, otherwise than by the free criticism and promptness to demand the redress of all manifest grievances, which is the inherent prerogative of Parliament.

Ministers require a parliamentary majority.

The attendance of members who are known to be supporters of government is specially invited by circulars from the Secretary of the Treasury, issued shortly before the opening of Parliament, and occasionally during a session when important divisions are anticipated. Upon a

Attendance of members.

'finality of the Reform Bill,' Lord Lyndhurst's 'aliens in blood, language, and religion,' and an unlucky speech of his own, in which he said, that 'the right of freemen to vote was *the plague-spot* on our representative system.' Lives of the Chancellors, vol. v. p. 267 *n*.

particular emergency, the leader of the House himself will address his supporters in this way. Similar circulars are issued, from time to time, on behalf of the Opposition.[p]

Decline of party control.

Prior to the Reform Act of 1832, and until the repeal of the Corn Laws by Sir Robert Peel's ministry in 1846, party organisation seldom failed to secure an adequate support in Parliament for the existing administration.[q] But the rapid and entire change of opinion which was exhibited by Sir Robert Peel in the settlement of that question, a change which he refrained from communicating beforehand even to the leading members of the Conservative party, gave a shock to the old system of party government from which it has never fully recovered; thereby rendering the repeal of the Corn Laws a landmark not only in our economical, but also in our constitutional history.[r] Added to which, as the other great questions which of old divided the Whigs and Tories into hostile camps were disposed of, and as the bulk of the nation began, in consequence of the spread of education, to take a deeper interest in matters of political concern, the number of independent members has naturally and inevitably increased, until it has become exceedingly difficult for any party to secure a reliable working majority in the House of Commons.[s] It is, however, foreign to the inten-

[p] Yonge, Life of Ld. Liverpool, vol. ii. p. 249. Mirror of Parl. 1835, p. 2803. Hans. Deb. vol. clxxxvi. p. 1684.

[q] Grey, Parl. Govt. new edit. p. 226. Walsh, Results of Reform Act of 1832, pp. 93, 150.

[r] See Peel's Memoirs, vol. ii. pp. 318–324. Quar. Review, vol. cxii. p. 372.

[s] See Hare, Election of Representatives, edit. of 1865, pp. 235–237, in which will be found the experience of the late Sidney Herbert of the effect of the decline of party control in the House of Commons. The extent to which the old system of subordination to party leaders was sometimes carried, may be inferred from the humorous description of an old Scotch county member, who was a staunch supporter of Mr. Pitt, and of whom it was said 'that his invariable rule was never to be present at a debate, or absent at a division, and that he only once, during the course of his long political life, ventured to vote according to his conscience, and that he found on that occasion he had voted wrong.' (Mirror of Parl. Sept. 23, 1831, p. 2376.) Edmund Burke used to define an independent member of Parliament as a member that no one could depend upon; but this is a definition which would find no favour with legislators at the present day. See Hans. Deb. vol. clxxxii. pp. 923, 926.

tion of the present writer to enlarge upon this topic, or to speculate upon the means of remedying the undeniable evils attendant upon a weak government. He professes to deal with facts and not with theories; and it has been his aim to limit himself strictly to the purpose in hand. He is now seeking simply to direct attention to the facilities afforded under constitutional government, for the free expression of the opinion of Parliament upon all ministerial acts, as well as upon all legislative measures; and to set forth the reasons which entitle Ministers of the Crown to expect from Parliament either a cordial support or a fair trial.

The Opposition.

And here it will be appropriate to advert to a feature in our political system, which began to be developed contemporaneously with the establishment of parliamentary government, and which has materially contributed to the vigour and efficiency of the same—namely, the presence in both Houses of an organised Opposition.

The political party of which the administration for the time being is the mouthpiece and representative, is invariably confronted in Parliament by another party, who themselves expect to succeed to power, whenever they acquire sufficient strength to overthrow their antagonists, and to assume the responsibilities of office. Acting upon well-defined principles, and within the strict lines of the Constitution, to which they profess an equal attachment to that exhibited by its official defenders, the adherents of this party have been aptly styled 'Her Majesty's Opposition,' and although the propriety of this designation has been disputed,[t] yet it may be understood as implying that loyalty to queen and constitution which should distinguish alike all parties in the Great Council of the nation.

[t] By Lord Melbourne, who said, 'I have heard gentlemen in the House of Commons called to order for using the word "opposition," because nothing is more unparliamentary than to say that a gentleman came to Parliament pledged to an opposition to the Government of the country.' (Mirror of Parl. 1841, Sess. 2, p. 549.) On the other hand, Mr. Disraeli, in 1861, made mention of 'the constitutional and formal name of opposition.' Hans. Deb. vol. clxii. p. 1323.

Their functions.

The Opposition exercise a wholesome influence upon parliamentary debate, and upon the conduct of the business of the crown in Parliament, for they are the constitutional critics of all public affairs;[u] and whatever course the government may pursue, they naturally endeavour to find some ground for attack. It is the function of an Opposition to state the case against the administration; to say everything which may plausibly be said against every measure, act, or word of every member of the ministry; in short to constitute a standing censorship of the government, subjecting all its acts and measures to a close and jealous scrutiny.[v]

But while Parliamentary Opposition affords a valuable security against the misconduct of a Government, it is liable to abuse, and may easily be perverted to factious and unpatriotic issues. It may be made the vehicle for personal acrimony and false accusation. It may pander to the popular passions for selfish or sectional ends. It is mainly kept in check by two considerations. Firstly, that its own proceedings are reviewed and criticised by the constituent body, aided by the free comments of the public press. Secondly, that in the event of success attending the endeavours of its leaders to replace the existing government, they must, for the sake of consistency, give practical effect in office to the policy they advocated in opposition. The view of this contingency exercises a sobering effect upon the character of an Opposition, and tends to keep it within the bounds of moderation.[w] 'Thus, as the hope of acquiring office reduces the bitterness of opposition, so the fear of a compulsory acceptance limits its extravagance.'[x]

It is an old maxim, that 'the duty of an Opposition is very simple, it is to oppose everything, and propose nothing.'[y] And in the same spirit, Sir Robert Peel used

[u] Mr. Disraeli, Hans. Deb. vol. clxxiv. p. 1366.

[v] Edinb. Rev. on Parliamentary Opposition, vol. ci. p. 14.

[w] *Ibid.* pp. 16, 17.

[x] Hearn, Govt. of England, p. 540.

[y] Attributed to Mr. Tierney, a friend and follower of Fox, and a

to say that 'he declined to prescribe till he was called in.'[z] The peculiar office of the Opposition is doubtless 'to watch with keen eye the conduct of the government they oppose, to see if anything be wrong, or blameable, or liable to criticism therein—to trip them up even before they fall—at all events, if they stumble to mark their stumbling, and call upon them to set things right again.'[a] 'The originators of measures and inventors of a policy, the individuals who come forward with their schemes and suggestions for public approbation, are not the Opposition, but the Ministers of the Crown; we (the Opposition) stand here to criticise the suggestions and schemes which they bring forward, and which are founded on knowledge wherein we cannot share, and inspired, no doubt, by the feeling of responsibility under which they act.'[b]

Leader of the Opposition.

As 'a legitimate Opposition forms the true counterpoise of the constitution,'[c] so the leadership of the government is suitably reflected in a leadership of the Opposition, by means of which the forces of the opposing party are marshalled and controlled. Without efficient leaders no party organisation can be successful or complete.

A leader of Opposition is usually chosen from personal considerations, and for the possession of qualities that point him out as the most fitting man to be appointed to the direction of the state, when his party succeed to power. Meanwhile, he must be able to command the support of his adherents by sagacity in council and promptitude in action. In the words of Lord Bolingbroke, 'people will follow like hounds the man who will show them game;' but a political leader must be prudent as well as energetic.[d]

A leader of Opposition should not lend himself to any

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great Whig authority. Mirror of Parl. 1841, p. 2117.

[z] Hans. Deb. vol. clxxvi. p. 811.

[a] Lord Palmerston. *Ibid.* vol. clxxiv. p. 1234.

[b] Mr. Disraeli. *Ibid.* p. 1366.

[c] See Mr. Bouverie's speech. *Ibid.* vol. cxci. p. 1729.

[d] Edinb. Rev. vol. cviii. p. 314 *n.* And see *ibid.* vol. cix. p. 187; vol. cxxvi. p. 565. And Yonge, Life of Ld. Liverpool, vol. i. p. 210; vol. ii. p. 164.

Opposition in relation to the Government.

attempts to thwart unnecessarily the progress of legislation in the hands of ministers; but should rather endeavour 'to secure, as far as he could for both sides of the House, a fair and free discussion; and when that discussion has been obtained, to facilitate the progress of public business, even if he disapproved of the measures of the government.'[e] In proof of the amenities which grace the proceedings of the British Parliament, notwithstanding the keenness and severity of party strife, it is regarded in both Houses as the appropriate duty of the Leader of the Opposition to second any motion proposed by the Leader of the Government, for the adoption of addresses of sympathy or of congratulation to the sovereign, or for giving the thanks of the House to particular individuals for meritorious conduct.[f] Furthermore, it is customary for members of the Opposition who formerly held office to co-operate with ministers in endeavouring to prevent the passing of any measures prejudicial to the public service, by affording to the House the benefit of their advice and official experience on the subject.[g]

Communications between them.

It is also usual, with a view to the furtherance of legislation in Parliament, for the Leader of the House to communicate freely with members of the Opposition, in order to arrive at an understanding in regard to the conduct of business which will tend to the convenience of members, or to facilitate the settlement of some delicate question, which is not necessarily of a party character.[h]

Occasionally, such communications assume a more important aspect, and refer to difficult political questions, in the settlement of which the co-operation of both sides of the House is desirable.

Two or three interviews of this description occurred between Pitt and Fox.[i] Mr. Addington consulted Pitt, his predecessor in office,

[e] Mr. Disraeli's Rule, in Opposition. Hans. Deb. vol. clxxxii. p. 1860; and see p. 1973.

[f] See Yonge, Life of Ld. Liverpool, vol. iii. p. 455. Hans. Deb. vol. clxxxv. p. 814. *Ibid.* vol. cxciii. pp. 480, 526, 865, 914.

[g] Earl Grey. *Ibid.* vol. cxci. p. 686. Mr. Gladstone's speech on the Revenue Officers' Disabilities Removal Bill. *Ibid.* vol. cxciii. p. 394.

[h] Mirror of Parl. 1834, p. 2746. Hans. Deb. vol. clix. pp. 234–236.

[i] Edinb. Rev. vol. ciii. pp. 321 *n.* 341.

on various occasions.[j] Mr. Brougham, when in opposition in the House of Commons, 'had communications often and again of the most delicate nature with Lord Castlereagh, with Mr. Canning, and with Mr. Perceval, to the last of whom he was more vehemently opposed even than is usual between those in opposition and the head of a government.'[k] During Lord Melbourne's Administration, the Duke of Wellington, who then led the opposition in the House of Lords, was in constant communication with government, not only upon 'all military matters, but likewise upon many others.'[l]

Upon two occasions, in the year 1840, ministers sustained defeats in Parliament, owing to the want of previous concert and understanding with the opposition. One was, in the reduction by the House of Commons of the amount proposed to be voted for an allowance to Prince Albert, upon his marriage with the queen; the other, in the rejection, by the House of Lords, of a clause in Prince Albert's Naturalisation Bill, intended to confer upon him precedence next after the queen. Both these mortifying occurrences 'might have been avoided by proper communications beforehand, between Lord Melbourne (the Premier) and the leaders of the opposition, such as in after years, under the guidance of the prince himself, were frequently had recourse to, when the question to be settled was one rather of a personal than a political character.'[m]

But in 1834, Mr. Littleton, the Chief Secretary for Ireland, held a confidential communication with Mr. Daniel O'Connell, in regard to the course intended to be pursued by government upon the Irish Coercion Bill, which communication produced no beneficial result, and was afterwards made the occasion of angry debate in Parliament. It was admitted to have been an irregular and imprudent proceeding, undertaken without the previous sanction of the government, and one that imperilled the very existence of the ministry.[n] Mr. Littleton's colleagues afterwards declared that his error consisted, not in the act of holding communication with the great opposition leader, but in the extent to which that communication had been carried.[o]

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[j] Stanhope, Life of Pitt, vol. iii. pp. 375, 381. Lord Liverpool, in 1815, 'had several meetings of members of all parties on the subject of the Corn laws.' Yonge, Life of Ld. Liverpool, vol. ii. p. 135.

[k] Lord Brougham, Mirror of Parl. 1834, p. 2747.

[l] The Duke of Wellington's letter to Lord Stanley, written in 1846, and quoted in the Fortnightly Review, vol. iii. p. 664. The Regency question was settled in 1840, by mutual agreement between Lord Melbourne and the leaders of the Conservative party. Grey, Early Years of the Prince Consort, p. 350.

[m] Grey, Prince Consort, pp. 276, 286.

[n] Mirror of Parl. 1834, pp. 2601, 2651, 2710.

[o] *Ibid.* p. 2746. See Earl Grey's remarks condemning 'private and unauthorised consultations' between leaders of opposite parties. Parl. Govt. ed. 1864, p. 271.

(e.) Questions put to Ministers, or to private Members, in Parliament, and statements made by Ministers of the Crown.

Questions to Ministers.

It is the practice, in both Houses of Parliament, to permit questions to be addressed to ministers of the crown, and to other members, upon matters of public concern. This proceeding is attended with great convenience to members, and is of public advantage, as it affords an opportunity for removing erroneous impressions, and disseminating correct intelligence, upon a variety of topics of general interest. It is also serviceable as superseding the necessity, in many instances, of motions for information; for it may be stated, as a rule, that 'the proper limit of questions is, whether or no they could be made the subject of a motion.'[p]

The earliest recorded instance of this practice, now so prevalent, occurred in the House of Lords, on February 9, 1721, when the Earl of Sunderland was Prime Minister. Lord Cowper took notice of a report that a certain offender, against whom the House of Lords wished to institute proceedings, and who had absconded, had been arrested abroad, 'which being a matter in which the public was highly concerned, he desired those in the administration to acquaint the House whether there was any ground for the report.' Whereupon Lord Sunderland stated that the report was true, and explained to the House the mode in which the individual had been captured and secured. An address was then passed praying the king to provide for the return of the offender to England in custody.[q]

Notwithstanding the length of time during which it has been customary to allow such interrogations to be made, and even so as to interrupt the ordinary course of parliamentary procedure,[r] it is only within a very recent period that the practice has been formally recognised and subjected to rule in either House.

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[p] Lord John Russell. Hans. Deb. vol. cxxxiii. p. 869. And see *ibid.* vol. cxxxvi. p. 684.

[q] Parl. Hist. vol. vii. p. 709. Campbell, Lives of the Chancellors, vol. iv. p. 384.

[r] See Mirror of Parl. 1829, pp. 6, 22. *Ibid.* 1830, Sess. 2, p. 281; 1830-31, p. 1097; 1833, pp. 32, 2471, 2491.

On April 29, 1830, we find the Speaker of the House of Commons ruling that 'there is nothing in the orders of this House to preclude any member from putting a question, and receiving an answer to it,' and that the proceeding, 'though not strictly regular, affords great convenience to individuals.'[s] And on the following day, after some objections and explanations, a question was, by courtesy, allowed precedence over an item which had been fixed as the first order of the day.[t]

At length, in 1854, upon the occasion of a Manual of the Rules and Orders of the House of Commons being prepared by Mr. May, under the direction of the Speaker,[u] special rules were agreed upon to regulate the time and method of putting and answering questions.

By Rule 152 it is provided, that 'before the public business is entered upon, questions are permitted to be put to ministers of the crown, relating to public affairs; and to other members, relating to any bill, motion, or other public matter connected with the business of the House, in which such members may be concerned.'[v]

Notice is usually given of the intention to ask questions of ministers, either by putting a formal notice on the paper,[w] or by a private intimation,[x] and the want of notice has been stated as a sufficient reason for not answering a question,[y] and likewise, because the enquiry has not been directed to the proper minister.[z] But upon urgent occasions, members may assert the right of putting questions without previous notice.[a]

In putting any such questions, no argument or opinion is to be offered, nor any facts stated, except so far as may be necessary to explain the question.[b] They should be

[s] See Mirror of Parl. 1830, p. 1428.

[t] *Ibid.* p. 1449.

[u] May, Parl. Prac. ed. 1868, p. 178 *n.*

[v] Revised Rule, ed. of 1859. And see Hans. Deb. vol. cxcii. p. 717.

[w] Mirror of Parl. 1839, p. 120.

[x] *Ibid.* 1828, pp. 1683, 2369.

[y] *Ibid.* pp. 1515, 1863. Hans. Deb. vol. cxcii. p. 1231. Commons' Papers, 1852–53, vol. xxv. p. 303. It is not usual to address any question to a minister of the crown upon the first day of a session; but it is sometimes done, even before the speech from the throne is reported. Hans. Deb. vol. cxxx. p. 108. Mirror of Parl. 1833, p. 32; 1839, p. 3.

[z] Hans. Deb. vol. cxcii. p. 1755; *ibid.* v. 193, p. 1539.

[a] Hans. Deb. vol. clxxv. pp. 2030, 2031. *Ibid.* vol. clxxxiv. pp. 1370, 1385. May, Parl. Prac. ed. 1868, p. 302.

[b] *Ibid.* Rule No. 153. Hans. Deb. vol. cxciii. p. 520.

'simply and severely accurate in their allegations,' for when mere opinions are expressed, at a time when they cannot be rebutted, there is an encroachment upon the liberty and freedom of discussion.[c] And a question has been refused a reply because it referred to a mere matter of opinion.[d]

Hypothetical questions are objectionable, and as a rule should not be answered. For no minister can undertake to say what the government, or what he himself will do, in a certain event, until the case has actually arisen, and its circumstances are fully known.[e] 'No doubt there may be subjects of sufficient importance to justify prospective enquiry, but, speaking generally, the position of the responsible servants of the crown in Parliament is to be responsible for what they *do*, and they are not called upon to take this House into their counsels in regard to what they are *going to do* on every small matter.'[f]

If an intended question be couched in offensive terms, or be otherwise objectionable, the Speaker in the Commons, or the House itself, in the Lords, will direct it to be altered or withdrawn.[g] And no question should be put to ministers that 'is not pertinent to the argument of some question before the House.'[h]

Questions to private members.

Besides questions to ministers of the crown, enquiries are sometimes addressed to ex-ministers,[i] to the Leader of the Opposition,[j] and to persons filling subordinate or non-political offices, in regard to the particular interest they represent; as, for example, members of royal or statutory commissions,[k] the Archbishop of Canterbury, as

[c] Hans. Deb. vol. clxxxiv. pp. 1066, 1068. *Ibid.* vol. clxxxv. p. 1646.

[d] *Ibid.* vol. cxlvii. p. 133.

[e] Mirror of Parl. 1828, pp. 2257, 2275. Hans. Deb. vol. cxcii. p. 1335.

[f] Palmerston. Hans. Deb. vol. cxliii. p. 1036.

[g] Mirror of Parl. 1837–38, p. 3425. Hans. Deb. vol. cl. p. 1596; vol. clxi. p. 342; vol. cxcii. p. 711.

[h] The Speaker. *Ibid.* vol. cxcii. p. 839. And see Mirror of Parl. 1829, pp. 1096, 1868. In regard to questions addressed to the law officers of the crown, see *post*, p. 372.

[i] Mirror of Parl. 1834, p. 324. And see Hans. Deb. vol. lxxvii. p. 133.

[j] *Ibid.* vol. cxcii. p. 657.

[k] Mirror of Parl. 1829, p. 2071. *Ibid.* 1834, p. 3384. Hans. Deb. vol. cxc. pp. 1457, 1796.

being President of the Upper House of Convocation,[l] and members of the Metropolitan Board of Works[m]—on matters of public concern.

The right to put questions to private members of either House is strictly limited, however, to enquiries with respect to particular measures or proceedings before Parliament in which they are concerned.[n] If a question does not come within this category, the Speaker would interpose and prevent its being put, or else inform the member that he need not answer it unless he pleased.[o]

Answers to questions.

Answers to questions should be confined to the points of enquiry, with such explanations only as may be necessary to render the answer intelligible.[p] But it has always been usual to accord a greater latitude in this respect to ministers of the crown.[q]

It has become an increasing habit for minute enquiries to be made in the House of Commons, in regard to public occurrences in all parts of the globe,[r] and sometimes questions are asked which ministers find it inconvenient to answer. Under such circumstances it is not unusual for the minister responding to enter largely into detail, but nevertheless to evade a direct reply to the question. This 'is a course which is often fit and becoming to adopt when questions are put to which it would be indiscreet to give a direct answer.'[s]

If a minister decline to answer a question, upon a matter of public concern, the subject thereof may be brought before the House by a special motion.[t] This course is sometimes preferable, as no matter ought to be propounded in the form of a question which is calculated

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[l] Hans. Deb. vol. clxxxviii. p. 1168.

[m] *Ibid.* vol. cxcii. pp. 341, 2138.

[n] *Ibid.* vol. lxiii. p. 491. And see *ibid.* vol. clv. p. 1345; vol. clxvi. p. 2028; vol. clxxiv. p. 1914.

[o] *Ibid.* vol. lxxvi. p. 1177. And see vol. lxxv. p. 1211.

[p] Mirror of Parl. 1831, p. 208. May, ed. 1868, p. 302. Rule No. 154.

[q] The Speaker. Hans. Deb. vol. clxi. p. 497; vol. clxxiv. p. 1423.

[r] See Commons' Papers, 1852-3, vol. xxv. p. 303.

[s] Lord Palmerston. Hans. Deb. vol. clxx. p. 359.

[t] Mirror of Parl. 1838, pp. 5381, 5386, 5870.

to raise discussion, or to anticipate explanations that could only be properly given in a general debate.[u]

Numerous precedents can be cited wherein ministers of the crown, and other members, have declined to give any answer to questions which they considered to be unnecessary, inexpedient, unusual, or impertinent. Generally they state reasons for declining to afford the desired information, but sometimes when the question is peculiarly objectionable no notice whatever is taken of it.[v]

Questions in the Lords.

In the House of Lords, a greater latitude is allowed in regard to questions. Until recently, a private notice was always deemed to be sufficient, which gave rise to much inconvenience, as it is customary to permit debates to take place, in the Lords, upon putting and answering questions, commenting upon the subject matter of the same, without any formal question being before the House.[w] But in 1867 a committee of the House of Lords recommended that, with a view to direct the attention of peers interested therein, to questions upon which a debate may arise, notice of all questions which admit of delay should be given in the minutes.[x] After due deliberation thereon, the House resolved, on April 2, 1868, that it is desirable, where it is intended to make a statement, or to raise a discussion on asking a question, that notice of the question should be given in the orders of the day and Notices.[y]

Ministerial statements.

Sometimes information upon a subject on which an enquiry had been made of ministers is given at a later period of the session, without further question or motion thereupon.[z] Or ministers may voluntarily communicate

[u] Mirror of Parl. 1831, p. 2201. Hans. Deb. vol. clxix. p. 1932; vol. clxxxvi. p.126.

[v] Mirror of Parl. 1828, p. 516. *Ibid.* 1829, p. 137; 1831, p. 1262; 1831-32, pp. 1197, 2427; 1835, p. 1060; 1839, p. 171. Hans. Deb. vol. clxxxiv. pp. 1659, 2164; vol. clxxxv. pp. 1239, 1327; vol. cxcii. p. 2135.

[w] May, ed. 1868, p. 302. Hans. Deb. vol. clxxxvii. p. 367; vol. clxxxviii. p. 1255.

[x] Lords' Journals, vol. xcix. p. 497. And see Hans. Deb. vol. clxxxix. p. 1329; vol. cxc. p. 157.

[y] *Ibid.* vol. cxci. p. 693.

[z] Mirror of Parliament, 1830-31, p. 350. Hans. Deb. vol. cxxi. p. 685.

information upon a matter of public interest, concerning which no question had been asked.[a]

Ministers of the crown may make statements to Parliament, from information in their possession, without being obliged to produce a written authority for the same.[b] But they are not at liberty to read, or quote from, a despatch or other state paper, not before the House, unless prepared to lay it on the table. But this rule only applies to public documents, and to such as can be produced without injury to the public interests.[c]

(*f.*) *The issue and control of Royal, Statutory, and Departmental Commissions.*

Commissions of Enquiry.

In the preparation of measures to be submitted for the consideration of Parliament, and in the conduct of public enquiries into matters which require the action of the executive government, it is necessary that the ministers of the crown should be able to avail themselves of competent assistance from every quarter, in collecting accurate information upon all public questions.

So far as the preparation of legislative measures is concerned, the time of Cabinet Ministers is unavoidably so much engrossed by their official functions, that 'there are very few of them who can give their attention to a great subject, and look at the consequences to the country of the measures which are adopted.'[d] With a view to afford substantial assistance to government in this direction, it has been customary of late years for select committees to be appointed by the Houses of Parliament, either at the suggestion, or with the concurrence of ministers, to investigate various important public questions

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[a] Mirror of Parl. July 18, 1831, p. 638.

[b] Palmerston, Hans. Deb. vol. clxx. pp. 1585, 1841. Attorney-General (Palmer), *ibid.* vol. clxxix. p. 489.

[c] See cases cited, in May, edition 1868, p. 320. Hans. Deb. vol. clxxxvi. p. 907; vol. cxc. p. 667. And see *ante*, vol. i. p. 357 *n.*

[d] Lord John Russell, Report on Official Salaries, Commons' Papers, 1850, vol. xv. Evid. 1225. And see *ante*, p. 165.

upon which legislation founded upon evidence is necessary. But a resort to parliamentary committees in such cases is sometimes objectionable, as it may tend to diminish the responsibility which properly belongs to the advisers of the crown.[e] This method of enquiry, moreover, is open to the inconvenience of having to be conducted under the pressure and distraction of other parliamentary duties: and it has often happened that after a protracted investigation into a particular subject, a parliamentary committee has been obliged to abandon the attempt to complete the enquiry to its own satisfaction, and has recommended that a royal commission should be appointed, who could bestow a more thorough and undivided attention upon it.

Their peculiar value.

Preliminary enquiries by a royal commission are of inestimable service to the working of parliamentary government. Besides affording peculiar facilities for ascertaining facts, they frequently bring to light a mass of information upon the subject in hand which could be obtained in no other way, and the report of an able and impartial commission is often of the highest value in the instruction and enlightenment of the public mind. 'The questions of pauperism and poor-law administration, of crime and penal administration, of pestilence and sanitary legislation, and of the evils attendant on excessive manufacturing labour, are conspicuous instances of the effects of commissions of enquiry in reversing every main principle, and almost every assumed chief elementary fact, on which the general public, parliamentary committees, and leading statesmen, were prepared to legislate.'[f]

It is not only as being directly helpful to ministers of the crown in the preparation of their legislative measures, but also as a means for the impartial investigation of

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[e] See *ante*, vol. i. p. 270.

[f] Paper by Mr. E. Chadwick, C.B. read before the Society for promoting the Amendment of the Law, January 29, 1859, on the Preparation of Legislative Measures by the cabinet, by parliamentary committees, and by commissions of enquiry: in Law Amendment Journal, Feb. 3, 1859.

every class of question upon which the crown or Parliament may need to be informed, that recourse may appropriately be had to a royal commission. It will therefore be suitable in this connection to point out the rules applicable to the issue of commissions, and to the subsequent proceedings in relation thereto.

Rules concerning commissions.

A royal commission may be appointed by the crown, either at its own discretion, and by virtue of its prerogative, or in conformity with the directions of an Act of Parliament, or in compliance with the advice of one or both of the Houses of Parliament. It is not necessary for both Houses to unite in an address to the crown for the issue of a royal commission, except when the same is expressly required by a particular statute, as, for example, the Act 15 & 16 Victoria, c. 57, which prescribes a joint address in order to obtain the appointment of a commission of enquiry into the prevalence of corrupt practices in any parliamentary constituency.[g]

While commissions are issued upon an address from either House indifferently, such addresses emanate more frequently from the Commons[h] than from the Lords;[i] and so much respect is usually paid to the expressed wishes of either House of Parliament that even though an address for the appointment of a commission be carried against the opposition of ministers, it is customary for the crown to direct the commission to be issued.[j]

The constitutional right of the crown to issue commissions of enquiry has indeed been questioned,[k] but mainly for reasons which, however weighty they might have been so long as prerogative government existed, are wholly

[g] See May, Parl. Prac. ed. 1863, p. 635. Such an address should originate in the Commons, and be moved for by the chairman or some other member of the Election Committee before whom the existence of bribery in the constituency was proved. Hans. Deb. vol. clxxxvi. p. 995.

[h] Com. Journ. vol. cxviii. pp. 250, 265, 363, 377; vol. cxix. pp. 215, 229.

[i] Lords' Journ. vol. xciii. p. 633.

[j] Site of the National Gallery, Hans. Deb. vol. cxlii. p. 2154. *Ibid.* vol. cxliii. p. 510. Sea Fisheries, *ibid.* vol. clxxi. pp. 261, 515.

[k] See Toulmin Smith, on Government by Commissions; particularly pp. 150, 168.

inapplicable to our present political system. Since ministerial responsibility has been properly defined and understood, commissions have become a recognised part of our governmental machinery, and it is now freely admitted that when confined to matters of legitimate enquiry they serve a most useful and beneficial purpose.[1]

Their scope and powers limited.

But it would be unconstitutional to refer to a royal commission 'subjects which are connected with the elementary duties of the executive government and with its relations to parliament;' or to appoint a commission with a view to evade the responsibility of ministers in any matter, or to do the work of existing departments of state, who possess all needful facilities for obtaining information upon questions of detail, and who are directly responsible to Parliament; or to enquire into crimes and offences committed by particular individuals, and which are cognisable by the ordinary courts of law. Neither should a commission be appointed unless the government are prepared to give definite instructions to the commissioners.[m]

A commission of enquiry should be limited in its operations to obtaining information, and suggesting the points to which it might be expedient that legislative or executive action should be directed. No commission should be invited to 'enter upon any question of policy,' lest it

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[1] Cox, British Commonwealth, p. 250. Cox, Inst. Eng. Govt. p. 155. In the fiscal year 1867–8, no less than twenty-three temporary commissions of enquiry were sitting at one time; though this number was considerably beyond the average. Civil Service Estimates, 1868–9, class ii. p. 63.

[m] See Hans. Deb. vol. clxx. pp. 915–919. *Ibid.* (Mr. Gladstone) vol. clxxv. pp. 1208, 1219. Toulmin Smith on Commissions, pp. 150–159. In 1867, however, a royal commission on Trades' Unions was specially empowered by Parliament to enquire into 'any acts of intimidation, outrage, or wrong, alleged to have been promoted, encouraged, or connived at by Trades Unions or Associations, whether of workmen or employers, in the town of Sheffield or its neighbourhood, and as to the causes of such acts, and the complicity therein of such Trades Unions,' &c. But the commissioners were subjected by the statute (30 Vict. cc. 8, 74) to restrictions in the exercise of these extraordinary powers. See *post*, p. 354. Without the authority of Parliament, any obstruction of, or interference with, the administration of justice by a royal commission, would be illegal. See Hans. Deb. vol. clxxvii. pp. 345, 378, 401.

should trench upon the proper limits of ministerial responsibility, and upon ground which belongs to Parliament.[n]

Appointment of Commissions.

Commissions of enquiry appointed by the crown, or by the head of any department of state, to examine into a particular matter, or to collect information on any important public question and advise the crown upon the same, are usually issued from the office of the executive government which they may specially concern, whether it be that of a secretary of state, the treasury, or any other department.[o] When not otherwise ordered, it becomes the duty of the Home Office to conduct the correspondence with the commissioners. And as a general rule, 'all the reports of royal commissioners come within the province of the home department alone.'[p]

The sovereign, by a commission issued under the sign manual, or by patent under the great seal, authorises certain persons therein named to enquire into a specified subject and report to the crown thereon.[q] It is customary on all occasions that the royal commands set forth in the commission should be more fully explained by instructions issued from the department of state specially concerned in the enquiry.[r] If the enquiry has been instituted upon the recommendation of either House of Parliament

[n] Mr. Gladstone, Hans. Deb. vol. clxxvii. pp. 233, 236. Sir Stafford Northcote, *ibid.* vol. clxxxiv. p. 1731. And see vol. clxxxv. pp. 1768, 1781.

[o] Commons' Papers, 1859, Sess. 2, vol. xv. pp. 557–559. Hans. Deb. vol. cxci. p. 1456. The Railways (Ireland) Commission was appointed by a Treasury Minute on October 15, 1867. See their report in Commons' Papers, 1868.

[p] Cox, Inst. Eng. Govt. p. 672. Hans. Deb. vol. clxxxvii. pp. 880, 1294.

[q] The Lord-Lieutenant of Ireland, as the Queen's Viceroy and representative, is empowered to appoint commissions of enquiry. Such commissions are issued from 'Her Majesty's Castle of Dublin, by His Excellency's command,' and are signed by the Secretary for Ireland. They authorise the proposed enquiry 'by all lawful and proper ways and means.' See Report of Commissioner to enquire into the Laws of Pawnbroking in Ireland, presented to Parliament in 1868.

[r] Hans. Deb. vol. clxxxv. p. 1769. But in the case of a Statutory Commission, the Assistant Commissioners are appointed by, and receive their instructions from the principal Commissioners, who are themselves governed by the instructions contained in the Act; although they must receive any such instructions through a minister of the crown. *Ibid.* vol. clxxxviii. pp. 431, 436, 522.

the government are not precluded from making it more extensive than was sought for by the terms of the parliamentary resolution.[s]

Choice of Commissioners.

The persons appointed to serve on royal or statutory commissions are selected without reference to their political opinions as supporters or opponents of the existing administration,[t] and generally on account of their familiarity with the subject-matter of the proposed investigation, or because they possess special qualifications for the task. Sometimes at the discretion of government, members of one or both branches of the legislature are appointed upon important public commissions, not merely because of their personal fitness, but also for the purpose of obtaining a direct representation of the commission in parliament.[u]

As a general rule, members of the government should not be appointed on commissions of enquiry, as it might afterwards become their duty to decide upon some executive action growing out of the same, as a question of state policy upon which a minister of the crown ought not to have previously committed himself to an opinion.[v] But this rule is not without exceptions. It would be quite justifiable and expedient to appoint a Cabinet minister on a

[s] Earl of Derby, Hans. Deb. vol. clxxxviii. p. 489.

[t] Hans. Deb. vol. cxciii. p. 972.

[u] See *ante*, p. 247. On March 26, 1868, two members of the House of Commons declined to vote on a question before the House, because it was about to be considered by a royal commission, upon which they had been appointed. Hans. Deb. vol. cxci. p. 323.

[v] Thus, Lord Stanley and Mr. Spencer Walpole having been appointed (by the Russell Administration) members of a royal commission, consisting of twelve persons, to enquire into Official Oaths, and report whether any such could be dispensed with or altered, upon their taking office under Earl Derby, in July 1866, a new commission was forthwith issued, substituting other persons in their places on this commission. Again, the Schools Inquiry Commission, appointed in 1864, included Lord Stanley, and Sir Stafford Northcote. When these gentlemen entered Earl Derby's ministry they remained upon the commission, but abstained from signing the report, which was presented in December 1867, as they stated, 'partly on the ground that official duties have prevented us from attending the later meetings of the commission, or studying with sufficient care the evidence produced; partly, also, because, as members of the executive, we think it better to reserve our opinion on the points at issue until the time comes when action can be taken upon them.' Rep. Schools' Inquiry Com. 1867-8, vol. i. p. 661.

commission of enquiry into matters particularly affecting the department of state over which he presides,[w] or on a commission charged to consider and determine upon any matters which had no connection with politics.[x]

Under any circumstances, a commission of enquiry ought not to be of a 'partisan' character, but should comprise 'the fairest and fullest representation of all opinions,' even such as may be 'strong and extreme' on the question proposed to be investigated. At the same time, the composition of a royal commission is a fair subject for parliamentary criticism.[y]

Statutory Commissions.

If a commission is to be appointed under an Act of Parliament, the selection of the members thereof should be left to the executive government. But it is in the discretion of ministers either to choose the commissioners themselves or to present to Parliament the names of persons whom they recommend to be nominated in the Act.[z] In the year 1692, the commissioners appointed to determine the Land Tax Assessment were named in the Bill, as it passed the House of Commons;[a] and that precedent has since been frequently followed.[b] In the case of a royal, as distinct from a statutory commission, it is not usual to

[w] Thus, in 1858, General Peel, Secretary of State for War, and Lord Stanley, President of the India Board, were placed on a commission to enquire into the organisation of the Indian Army; and in the same year the President of the Council (Marquess of Salisbury) being a colonel of militia, was appointed on the commission on the organisation, &c. of the Militia. (Commons' Papers, 1859, Sess. 2, vol. viii. p. 1; *ibid.* vol. ix. p. 3.) In 1868, Lord Chancellor Cairns was a member of the commission to consider the state of the Neutrality Laws. Hans. Deb. vol. cxci. p. 342.

[x] Thus, the royal commission appointed in 1841, and which is still in existence, to enquire into the decoration of the new Houses of Parliament, and generally into the promotion and encouragement of the Fine Arts in the United Kingdom, has included actual as well as former Prime Ministers, with other leading statesmen. (Commons' Papers, 1861, vol. xxxii. pp. 215–224.) See also a list of the commissioners for the International Exhibition of 1851. *Ibid.* p. 282.

[y] Hans. Deb. vol. clxxxv. pp. 190, 514; *ibid.* vol. clxxxviii. pp. 121–125, 243.

[z] See Mr. Gladstone's observations deprecating private members assuming the responsibility of naming a proposed commissioner. Hans. Deb. vol. cxcii. p. 1941. And see *ibid.* vol. cxciii. pp. 1658, 1905.

[a] Macaulay, Hist. of England, vol. iv. p. 317.

[b] See Act 30 & 31 Vic. c. 51. Public Schools Bill of 1868, secs. 16–20.

communicate to Parliament, beforehand, the names of persons intended to be appointed, with a view to invite discussion upon the choice of the crown,[c] although the government sometimes deem it expedient to take this course.[d]

In the case of a statutory commission, while it is discretionary with the government to give or to withhold from Parliament the names of intended commissioners, it is not unusual to submit them for parliamentary approval, with a view to create a good understanding between the crown and Parliament in the settlement of a particular question.

Thus, in 1831, before the passing of the first Reform Act, after an ineffectual attempt to obtain the sanction of Parliament to a Bill containing the names of the Boundary Commissioners, ministers themselves assumed the responsibility of appointing the individuals proposed.[e] In 1867 the names of the intended Boundary Commissioners, under the new Reform Act, were submitted to the House of Commons, agreed to, and inserted in the Bill.[f]

Compensation.

The services of persons appointed as members of a royal commission are generally rendered gratuitously; although compensation is occasionally allowed for their time and labour. Actual expenses incurred are, of course, defrayed out of the public funds.[g]

Powers.

It is customary for a royal commission not only to take evidence, but also to receive written communications from competent persons who may be willing to address them on the subject-matter of their enquiry. They are at liberty, moreover, when it may be necessary for the furtherance of their investigations, to institute and conduct experiments for the purpose of testing the accuracy of particular theories, or the utility of inventions, &c.

But unless expressly empowered by act of parliament, no commission can compel the production of documents, or

[c] Hans. Deb. vol. clxxxvii. p. 1489.
[d] *Ibid.* vol. clxxxviii. p. 983; vol. clxxxix. p. 602.
[e] *Ibid.* vol. clxxxviii. p. 430.
[f] *Ibid.* vol. clxxxvii. pp. 1129, 1547, 1940; vol. clxxxviii. pp. 176, 270, 522.
[g] Commons' Papers, 1856, vol. xxxviii. p. 395. *Ibid.* 1859, vol. xv. p. 561; *ibid.* 1867, vol. xl. p. 361.

the giving of evidence,[h] or can administer an oath.[i] It was, indeed, provided by a statute, passed in 1851, that any 'commissioner,' &c., now or hereafter having *by law*, or by consent of parties, 'authority to hear, receive, and examine evidence,' shall be 'empowered to administer an oath to all such witnesses as are legally called before' him.[j] But this Act would seem to refer to commissioners appointed by the courts of law, or acting under statutable authority, and not to extend to those whose appointments proceed direct from the crown. Upon certain occasions the crown has undoubtedly claimed the right to confer upon commissioners appointed by prerogative 'full power and authority, when the same shall appear to be requisite, to administer an oath or oaths to any person whomsoever to be examined' before them.[k] It is extremely doubtful, however, whether this is not an unlawful assumption of power.[l] Such a clause is, in fact, but rarely inserted in

Compulsory powers.

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[h] Cox, Brit. Commonwealth, p. 251. Toulmin Smith, p. 202. Law Magazine, vol. xv. p. 85.

[i] Toulmin Smith, p. 188.

[j] 14 & 15 Vict. c. 99, sec. 16. But see the decision on this clause, in Reg. v. Hallett, 2 Denison C. C. 237. In Canada, ever since 1846, the Governor in Council has been empowered (by Act 9 Vict. c. 38) —when he deems it expedient to cause enquiry to be made into any matter connected with the good government of the province, the conduct of public business, or the administration of justice therein, to confer upon the commissioners compulsory powers, in the summoning of witnesses, the production of documents, and the taking evidence upon oath, in order to the full investigation of the matter referred to them. (Consol. Stats. Can. p. 185.) No formal complaint having been made of the abuse of these powers, in 1868, after the union of the British North American provinces, this provision was re-enacted, and extended to the whole dominion, by Act 31 Vict. c. 38. But see Mr. T. K. Ramsay's pamphlet (Montreal, 1863) protesting against the legality of a commission appointed under the statute 'to investigate certain charges of malversation of office,' which had been made against a clerk of the peace and a clerk of the crown, in Lower Canada, as well as 'to enquire into the organisation' of the offices in question.

[k] For example: The Navy (Dockyards) Commission, in 1860; Commons' Papers, 1861, vol. xxvi. p. 3. The Children's Employment Commission (1862) in Com. Papers, 1863, vol. xviii. p. 3. The Irish Church Commission, 1867, Com. Papers, 1867-8.

[l] See Lord Campbell, Hans. Deb. vol. lxv. p. 491. Stat. 5 & 6 Will. IV. c. 62, sec. 13. Smith, Parl. Rememb. 1857-8, pp. 21, 51. *Ibid.* 1865, p. 43. See the case stated in regard to compulsory powers to commissions appointed under the authority of the crown in India, Hans. Deb. vol. cxci. p. 1223; and Act 31 & 32 Vict. c. 63, to enable commis-

a royal commission; and the want of compulsory powers has seldom prevented a commission from obtaining full and impartial information upon the subject-matter of their enquiry. On the other hand, there have been frequent instances of the interposition of Parliament, to confer upon royal commissioners, in certain cases, additional powers, and to authorise the appointment of commissions with extraordinary powers.[m]

Extraordinary powers.

Trades' Unions.

Thus, on February 8, 1867, Mr. Walpole (the Home Secretary) obtained leave to bring in a bill to facilitate the proceedings of a Royal Commission appointed to make enquiry respecting Trades' Unions, &c., by conferring upon it certain extraordinary powers, for the purpose of investigating into a recent outrage perpetrated at Sheffield, the perpetrators of which the government, notwithstanding repeated attempts, had been unable to discover. These powers were to enable the commissioners to compel the production of documents, to enforce the attendance of witnesses, to take evidence upon oath, to punish persons guilty of contempt, and to indemnify witnesses from the penalties which might otherwise attach to them for illegal acts which they had committed, on condition of their making full and complete confession of the same. After considerable debate this Bill was agreed to, and became law. It also contained a provision empowering the Secretary of State, on application from the Commissioners, to appoint certain qualified persons as examiners, to assist in taking evidence in regard to the Sheffield outrage. But all enquiries under the Act were directed to be conducted in public, and after due notice.[n]

Before the close of the session, the government deemed it incumbent upon them to apply to Parliament for an extension of the powers conferred by the aforesaid Act; with a view to enable the Secretary of State, upon application of the commissioners, to authorise similar investigations to be instituted at other places. Accordingly an Act was passed for this purpose.[o]

The authority of Parliament has also been invoked to extend the operation and functions of a commission

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sioners appointed by the Governor-General of India to enquire into the failure of the Bank of Bombay, to examine witnesses on oath in the United Kingdom.

[m] For example, see Stat. 1 & 2 Geo. IV. c. 90; 3 Geo. IV. c. 37; 5 Geo. IV. c. 20, sec. 11; 3 & 4 Will. IV. c. 37, sec. 165; 17 & 18 Vict. c. 117; 30 & 31 Vict. c. 104.

[n] 30 Vict. c. 8; Hans. Deb. vol. clxxxv. pp. 179–189, 994; vol. clxxxvi. p. 271.

[o] *Ibid.* vol. clxxxviii. p. 1398. Act 30 & 31 Vict. c. 74.

originally appointed by the crown, as the following example will show :—

Patriotic Fund.

During the Crimean war, in 1854–5, large sums of money were raised by private benevolence and public subscription, for the relief and succour of the families of soldiers and seamen who fell in that war; and for the education and training of their orphan children. For the better administration of this 'Patriotic Fund,' it was deemed expedient to appoint a Royal Commission, on October 7, 1854, to take charge of and appropriate the same, for the purpose hereinbefore mentioned.[p] In 1866, after all the legitimate claims upon this fund had been provided for, and a large surplus still remaining, it became necessary to apply to Parliament for authority to expend this money for other purposes, of a like nature, in connection with the army and navy.[q] Whereupon an Act was passed, making the fund permanently available: (1) for the purpose for which it was originally collected; (2) for the education, training, and advancement of children of soldiers, seamen, or marines, who had lost, or might hereafter lose their lives in battle, &c., in any other war; and (3) to defray the salaries of a secretary and clerks, to whom might be awarded suitable retiring allowances, 'the same, with other expenses, to be paid out of the Patriotic Fund.'[r]

In 1867, another Act was passed, confirming the previous disposition of the Patriotic Fund, and authorising its extension so as to confer similar benefits upon the children of any soldiers or seamen, &c., who had died, or may hereafter die, while in the service of the crown. Also providing for the appointment of official trustees in whom the property of the Fund might be vested; and for a regular audit of the accounts of moneys expended.[s]

Internal proceedings.

Within the limits of their prescribed functions, and subject to the provisions of any act of parliament defining the same, royal commissions have 'the absolute power of regulating the proceedings of their own tribunal, and of admitting or excluding what persons they please' from attendance during their sittings. But it must be understood that they are liable to have their proceedings questioned in either House of Parliament.[t]

All the expenses attending a Royal Commission are

[p] For a copy of the commission, and of the First and Second Reports of the Commissioners, see Commons' Papers, 1857–8, vol. xix. p. 557.

[q] Hans. Deb. vol. clxxxiii. p. 1684.

[r] Act 29 & 30 Vict. c. 120.

[s] Act 30 & 31 Vict. c. 98; Hans. Deb. vol. clxxxviii. p. 1255.

[t] Hans. Deb. vol. clxxxviii. p. 1437.

Expenses. defrayed by the Treasury, out of moneys annually voted by Parliament for such purposes.[u] But it is not usual for commissioners to incur any extraordinary expenditure without the previous sanction of the Home Office, by whom the application would naturally be referred to the Treasury.[v]

The expenses attending certain permanent public commissions form a very considerable item in the Civil Service estimates. It has been a growing opinion for several years that these ought not to be a public charge, but that the offices in question, so long as it may be necessary that they should continue in operation, should be self-supporting.

On April 24, 1868, on motion of an independent member, it was resolved, by the House of Commons, that the expenses of the Copyhold, Inclosure, and Tithe Commission, Inclosure and Drainage Acts, and Charity Commission ought not to be borne by the public. The Resolution was only carried by a majority of one, ministers voting against it, although the government would have readily asserted to it, if the word 'entirely' had been added before the word 'borne.'[w]

Secretary. As a check upon the proceedings of commissions, in pecuniary matters, it is required that the secretary, even of a statutory commission, should be appointed either by or with the direct approval of the executive government. He is often nominated in the commission itself. Unless special qualifications occasion another choice, it is not uncommon to select the secretary of a commission from amongst the subordinate officers of the Treasury.[x]

A Royal Commission continues in existence until it has completed its labours, unless its duration be expressly limited by the terms of the Letters Patent or Act of Parliament, under which it was appointed; or unless it

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[u] See Civil Service Estimates, 1867–8, Class VII. pp. 3-9.

[v] Hans. Deb. vol. clxxxiv. p. 1070.

[w] Hans. Deb. vol. cxci. pp. 1280–1295.

[x] *Ibid.* vol. clxxxviii. pp. 436, 527.

be sooner revoked and discharged by the crown.[y] When the whole, or any particular portion of the enquiry, has been brought to a close, the commissioners present their report to the crown through the Secretary of State for the Home Department. This report is usually transmitted to Parliament by command, or communicated upon an address. Report.

But a motion in the House of Commons, on May 17, 1836, for an address to the crown to direct a certain commission to report forthwith upon a particular portion of the enquiry entrusted to it, was declared by ministers to be a very unusual course, and an attempt to 'take out of the hands of the crown the direction of a commission appointed by it.' After a short debate, the motion was withdrawn.[z] Commissions in relation to Parliament.

For royal commissioners are not directly amenable to Parliament, but only to the crown.[a] And Parliament ought not to interfere with their proceedings, unless it could be shown that they were acting unfairly, or were incompetent, or were otherwise unworthy of the confidence of the government, or of Parliament, when either House might address the crown for their removal from office.[b]

On March 24, 1868, Mr. Disraeli declined to lay before the House Reports of the Assistant Boundary Commissioners, on the ground that they were 'essentially confidential documents, supplied for the information of the Boundary Commissioners, who form their opinion upon them, and who are responsible for the opinion they give to this House.'[c] Accordingly, a reference to these Reports by one who had perused them was declared to be out of order.[d] But afterwards ministers consented to produce them.[e]

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[y] The Criminal Law Commission, appointed in 1833, was revoked on February 22, 1845 (Commons' Papers, 1854-5, vol. xliii. p. 405). The West Indian Encumbered Estates Commission was appointed under the authority of the Act 17 & 18 Vict. c. 117, which limited its duration to six years. By subsequent statutes, it has been prolonged to August 1869. (Civil Service Estimates, 1868-9, Class VII. No. 1.) The Oaths Commission, appointed on May 17, 1866, was revoked, and a new one issued on July 16, 1866. The Commission on Popular Education in England was required by its letters patent of June 30, 1858, to complete its enquiry 'within the space of two years.' But on June 8, 1859, it was extended for another year. Com. Papers, 1861, vol. xxi. part i. p. 5.

[z] Mirror of Parl, 1836, p. 1521.

[a] Hans. Deb. vol. clviii. p. 2083.

[b] *Ibid.* vol. clviii. p. 902, 903

[c] *Ibid.* vol. cxci. p. 146.

[d] *Ibid.* vol. cxcii. p. 1261.

[e] *Ibid.* p. 1335.

Departmental Committees.

There is another species of commission, of a less prominent and important character, but which is nevertheless of great utility in furthering the work of administration, viz.: what is usually termed a departmental committee, appointed by a Treasury Minute,[f] or by the authority of a secretary of state, for the purpose of instituting enquiries into matters of official concern, and suggesting improvements or remedies for obvious defects or deficiencies in existing administrative arrangements.[g] Such committees are generally composed of two or more permanent and experienced officers, belonging to the particular departments concerned in the proposed investigation, with whom is frequently associated a Lord of the Treasury, or some other subordinate member of the administration.

On May 8, 1868, a motion was made in the House of Commons, to resolve, that 'two members of this House, and another civil engineer, should be added to the committee appointed [by the Secretary of State for War] to consider the question of the fortifications for the defence of the United Kingdom and of the colonies, and that arrangements shall be made to stop, as far as possible, all further outlay until that committee shall have reported to this House.' After a long debate, during which it was objected that the appointment of members of the House of Commons on a departmental committee, 'would have the effect of taking away, in a great measure, the responsibility in the matter which ought to rest solely on the executive government,' the motion was withdrawn. Another motion to suspend the said works until the report of this departmental committee shall have been communicated to the House, was then put and negatived.[h]

If a political officer be included in a departmental committee, and a change of ministry should occur before its labours are completed, the committee would necessarily become defunct. Although, if the committee were prepared with a report, they might be permitted to pre-

[f] For copy of the Treasury Minute, of April 12, 1853, appointing a Committee of Enquiry into the organisation of the permanent Civil Service, see Commons' Papers, 1854-5, vol. xxx. p. 375.

[g] See Mr. Gladstone's observations on the utility of an official committee of practical men, as a means of breaking ground upon a question of administrative reform. Hans. Deb. vol. cxciii. p. 320.

[h] Hans. Deb. vol. cxci. pp. 2021-2054.

sent an informal and unofficial statement, or draft report, to the new administration, setting forth what they had intended to embody in their report, which would receive the careful consideration of the government.[i]

Expenses.

The remuneration of persons not already in official employ, who are appointed to serve on a departmental committee, should be authorised and prescribed in the Treasury Minute, and charged to the account of civil contingencies.[j] It would thus come under the review of the House of Commons, when a vote is submitted in supply to make good advances out of this fund.[k]

Reports.

Reports from departmental committees are usually regarded as confidential documents, and are very seldom communicated to Parliament.[l]

Thus, on June 8, 1868, the Home Secretary declined to lay before the House of Commons the report and evidence taken by a committee appointed by him to enquire into the management of the Metropolitan Police, 'for the reason that the witnesses were informed that their evidence would not be made public.' Immediately afterwards, the Secretary for War declined to lay upon the table the report of the committee on Obstructions for the Defence of Harbours, &c., 'as it contained matter which it would be inexpedient to make public.'[m]

2. The Parliamentary Duties of Particular Ministers.

We next proceed to consider the duties which are appropriately assigned to particular members of the Administration in connection with Parliament. Our observations on this head will chiefly apply to the House of Commons, that being the chamber wherein the most arduous labours and responsibilities are exacted from ministers of the crown.

But first let us briefly notice the places assigned by

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[i] Hans. Deb. vol. clxxxviii. p. 1909. Commons' Papers, 1867, vol. xxxix. p. 425.

[j] Commons' Papers, 1854-5, vol. xxx. p. 376.

[k] See *ante*, vol. i. p. 551. Civil Service Estimates, 1867-8, Class VII. p. 20.

[l] Hans. Deb. vol. clxx. p. 198; Mirror of Parl. 1840, p. 1120; and see *ante*, vol. i. p. 280.

[m] Hans. Deb. vol. cxcii. p. 1222.

Places of parliamentary leaders.

usage in the Houses of Parliament to the leaders of the respective parties of the Government and of the Opposition.

In the House of Lords the members of the administration sit on the front bench, on the right of the woolsack; and the peers who usually vote with them occupy the other benches on that side of the House. The peers in opposition are ranged on the left side of the chamber; while those who desire to maintain a political neutrality usually sit upon the cross benches, which are placed between the table and the bar.[n]

Treasury Bench.

In the House of Commons, the front bench, on the right hand of the chair, is reserved for members holding office under the crown; and the front bench opposite is ordinarily occupied by Privy Councillors and other members who have held office under the crown.[o] The accommodation provided for members who desire to occupy a neutral position between contending parties is very inadequate.[p]

On the opening of a new parliament, the four members for the City of London claim, by ancient usage, and generally exercise, the right of sitting on the Privy Councillor's bench; at other times that bench is left for the ministers of the crown, who are supposed by their avocations to be prevented from coming down to take places for themselves. But though the reservation of the Treasury bench to the use of Privy Councillors is traceable at least as far back as the reign of Charles I., it is only as a matter of courtesy and not of right. Mr. Holles, an eminent member of Parliament in 1628, and William Cobbett, at the opening of the first Reform Parliament in 1833, are memorable examples of private members asserting the right, on particular occasions, of sitting on the front bench 'above the Privy Councillors.'[q] In Walpole's time

[n] May, Parl. Prac. ed. 1859, p. 204.
[o] Rule, H. of C. No. 90.
[p] Hans. Deb. vol. clxxxii. p. 913.
[q] *Ibid.* pp. 920, 924. May, ed. 1859, p. 205. Hatsell, Prec. vol. ii. p. 94. Knight, Popular Hist. of Eng. vol. viii. p. 317.

(1741) it was customary for the leaders of adverse parties being Privy Councillors to sit upon that bench together ;[r] but since the accession of George III. it has been usual to concede to ministers of the crown of every grade, including even the officers of the royal household,[s] the undisturbed possession of the Treasury bench.

(a.) The Leader of the Government in the House of Lords.

Leader of the House of Lords.

In the House of Lords, as well as in the Commons, there is always a minister specially entrusted with the lead and management of public business on behalf of the executive government. When the Prime Minister is a peer, he will generally undertake this duty himself. Otherwise, it is confided to the minister who, in virtue of his position and qualifications, is considered by the Prime Minister as being the most capable of filling it with advantage.[ss] By whomsoever undertaken, the leadership of the House of Lords is a charge which confers 'great importance' upon its possessor, as well as 'great influence in the general administration and patronage of the government.'[t] It naturally calls for the exercise of the highest qualities of a statesman, inasmuch as 'the fixed character of our Constitution renders it the interest, not to say the paramount duty, of every minister so to shape his course as, if possible, to keep the two Houses of Parliament in harmony, and not to throw himself absolutely and entirely into the hands of one branch of the legislature, regardless of the wishes and feelings of the other.'[u]

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[r] Mahon, Hist. of Eng. vol. iii. p. 102 *n.* Ministers, in the early days of George III., used always to attend the sittings of the House in full court dress. Donne, Corresp. Geo. III. vol. ii. p. 432; Edinb. Rev. vol. xcix. p. 53 *n.*

[s] Hans. Deb. vol. clxxxvi. p. 226.

[ss] It was customary, until the early part of this century, that when the Prime Minister was a commoner, the lead of the House of Lords should be given to the Home Secretary, if a peer. As such, Lord Hawkesbury was Leader, in 1807, notwithstanding that the premier (the Duke of Portland,) was a peer. Yonge, Life of Ld. Liverpool, vol. i. pp. 145, 193, 228.

[t] Marquis Wellesley, Parl. Deb. vol. xxiii. Appx. p. iv.

[u] Earl of Derby, Hans. Deb. vol. cxxxiv. p. 840.

(*b.*) *The Leader of the Government in the House of Commons.*

Leader of the House of Commons.

If the Prime Minister be a member of the House of Commons, he will personally undertake the leadership of that House. For this is an office of too elevated and influential a character to be conferred upon a subordinate. It is, in fact, 'the crown of the premiership itself, if united with it; if detached, the function which continually threatens the official chieftaincy with eclipse.'[v] The extreme importance of the duties of this office towards the most popular and powerful branch of the legislature, places it, under any circumstances, in the very front rank of the ministry. The Leader of the House of Commons occupies a post second only in dignity and responsibility to that of chief minister of the crown; for in addition to his ministerial functions, he is the proper 'champion of the rights and privileges of the House of Commons, and the trustee of its honour.'[w]

The position and duties of the leadership have been thus defined by one of the ablest occupants of the office within the present century: 'It is that station in the House of Commons which points out him who holds it as the representative of the Government in that House, the possessor of the chief confidence of the crown and of the minister. Its prerogative is, that in all doubtful questions, in all questions which have not been previously settled in Cabinet, and which may require instant decision, he is to decide—upon communication with his colleagues sitting by him undoubtedly, if he be courteously inclined—but he is to decide, with or without communication with them, and with or against their consent.'[x]

The strength and efficiency of a government, and the activity and usefulness of the House itself, largely depend upon the character, energy, tact, and judgment of the

[v] Edinb. Review, vol. cxxvi. p. 565.

[w] Mr. Disraeli, Hans. Deb. vol. clxxiv. p. 1230.

[x] Mr. Canning, Letter to Wilberforce, in 1812, citing examples, Life of Wilberforce, by his Sons, vol. iv. pp. 38–40. Stapleton, Canning and his Times, p. 208. And see Yonge, Life of Ld. Liverpool, vol. i. pp. 408–423.

leader of the House of Commons.[y] In conjunction with his trusty aids, the financial and parliamentary Secretaries of the Treasury, it devolves upon him to control the conduct of business in that chamber so as best to promote the public interests;[z] and out of the House to contribute, as far as possible, to the maintenance of a good understanding amongst members, of every shade of political opinion, by a frank cordiality and social intercourse.[a]

Origin of the office.

The office of leader or manager of the House of Commons is coeval with the existence of parliamentary government. It was first filled by Charles Montague, Chancellor of the Exchequer in William III.'s first party ministry, who for four years (1694–1698) exercised an authority in the House of Commons which Macaulay says 'was unprecedented and unrivalled.'[b] Under the discordant and vacillating Cabinets that immediately followed, there was no opportunity for the leader of the Commons to assert his true position. But in 1715, in the hands of Sir Robert Walpole, the office began to reassume its original importance.[c] It has since been held and adorned by most of the eminent statesmen who have shed lustre upon our annals from that period until now.

Upon whom conferred.

On account of the dignity and influence belonging to this office, it is usually held in conjunction with that of First Lord of the Treasury, or Chancellor of the Exchequer, or with both combined. When the Prime Minister is a peer, the leadership of the House of Commons is most suitably conferred upon the Chancellor of the Exchequer. Formerly, it used to be given, by preference, to a Secretary of State, but according to recent precedent, it may be associated with any Cabinet office, provided it be one of the highest grade. Within the present century, it has been held by Lord Castlereagh and

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[y] Edinburgh Review, vol. cviii. pp. 279, 280.

[z] See *ante*, pp. 324, 333.

[a] Mr. Disraeli, Hans. Deb. vol. clxxxvi. p. 1593.

[b] Macaulay, Hist. of Eng. vol. iv. p. 732; vol. v. pp. 157, 165.

[c] Mahon, Hist. of Eng. vol. i. pp. 165, 198; and see *ante*, p. 120.

by Mr. Canning,[cc] in connection with the office of Foreign Secretary; by Sir R. Peel and by Lord John Russell with that of Home Secretary; and again by Lord John Russell in conjunction with the Presidency of the Council.[d] But in 1855, in view of the increasing labour and responsibility attaching to the office, it was agreed between Lord Palmerston and the Earl of Derby, that it was no longer possible to combine the lead of the House of Commons with the duties of an extensive and laborious department.[e] Since then the leadership has been held by Lord Palmerston, as Premier and First Lord of the Treasury, by Mr. Gladstone and by Mr. Disraeli as Chancellors of the Exchequer. In 1868, when, upon the resignation of the Earl of Derby, Mr. Disraeli became First Lord of the Treasury, he assigned the office of Chancellor of the Exchequer to Mr. Hunt, but retained in his own hands the lead of the House of Commons.

Held with no departmental office.

On February 24, 1853, upon the occasion of Lord John Russell, who was the leader of the House of Commons and Foreign Secretary, resigning the seals of the Foreign Office, and continuing to hold the leadership without any departmental office, a private member of the House of Commons gave notice of his intention to move a resolution that 'considering the great increase which has taken place of late years in the business of this House, and the corresponding increase in the amount of labour and responsibility which devolve upon the leader of this House, rendering it next to a physical impossibility that he should conduct the business of this House and at the same time satisfactorily discharge the duties of one of the great departments of the state, it is desirable that a salary should be attached to the leadership of the House of Commons (an office second to none in the Government), commensurate with its duties and responsibilities, whenever it is held unconnected with any salaried office.'[f] During this session, however, no such motion was made, Lord John Russell continuing, meanwhile, to lead the House without office. But on February 9, 1854, the same member moved for the appointment of a select committee, 'to consider the duties of the

[cc] In 1812, Mr. Canning claimed a right to the Leadership, in connection with the office of Foreign Secretary, over that of the Chancellor of the Exchequer, but was overruled on personal grounds. See Yonge, Life of Lord Liverpool, vol. i. pp. 408–423, vol. iii. p. 191.

[d] Hans. Deb. vol. cxxx. pp. 380, 385; *ibid.* vol. cxxxvi. p. 937.

[e] *Ibid.* vol. cxxxvi. p. 1344.

[f] *Ibid.* vol. cxxiv. p. 549.

member leading the Government in this House, and the expediency of attaching office and salary thereto.' The mover urged the increasing importance of the office, and the peculiar experience and ability required to fill it: also, that the leader must be present in the House early and late, and must make himself master of every question introduced, whether by Government or by private members. In reply, it was objected on the part of ministers, that it was wrong in principle 'to attach a salary to an office that did not exist, and the duties of which could not be defined:' and that 'it was clearly incompatible with constitutional practice that a salary should be given to any person except for the discharge of official duties as a member of the Government.'[g] It was asserted, moreover, that the precedent established by Lord John Russell was 'very inconvenient if not unconstitutional.' There were certainly instances of Cabinet Ministers 'sitting in the House of Lords, without holding at the time any particular offices. In the House of Commons, however, there was one such instance only, until the case of the noble lord; and there was none in which he had acted, like the noble lord, as the organ of the Government.' Were this practice to be followed, it would permit the crown to 'select its ministerial advisers from members of that House, without requiring that the persons so selected should go back to their constituents for re-election:' and 'the country would be deprived of the means of knowing who, in fact, were the responsible advisers of the crown.' For there being no responsibility which enabled the Commons to question, by impeachment, the conduct of a minister, unless the act complained of could be proved by an official signature or seal, ministerial responsibility, which has already become little else than responsibility to public opinion and to parliamentary censure, would be still further weakened, and the 'anomalies of the constitution' increased.[h] Lord John Russell replied to these arguments by declaring 'that it is not merely the business which a minister transacts by virtue of his office, but any advice he has given, and which he may be proved before a committee of this House, or at the bar of the House of Lords, to have given (in the capacity of a privy councillor) for which he is responsible, and for which he may suffer the penalties which may ensue,' equally whether he holds office or not, because all privy councillors are responsible for any advice they may tender to

[g] To the same effect, a committee of the House of Commons, in 1863, on Private Bill Legislation, reported against a proposal to appoint salaried Chairmen of Select Committees on Private Business, who would sit continuously through the Session, on the ground that the constitutional objection to having Members of Parliament, who are returned to perform their duties to their constituents and the public, paid for serving as chairmen would outweigh the undoubted advantages that would accrue therefrom. Commons' Papers, 1863, vol. viii. pp. 210, 302, 556.

[h] Sir C. Wood and Mr. Walpole, Hans. Deb. vol. cxxx. pp. 379–385.

the sovereign. Without wishing to enter into any question personal to himself, Lord John Russell admitted 'that the organ of the Government in this House should, generally speaking, hold office.' After which the motion was withdrawn.[i] On June 9, certain ministerial changes took place, and Lord John Russell was appointed President of the Council.[j] After his re-election he continued to act as leader of the House of Commons.

(c.) *Ministers charged with the moving of Estimates, and submitting the Budget in the House of Commons.*

Moving of Supply votes.

As a general rule, any member of the administration who represents a department on behalf of which votes are to be taken in Committee of Supply, is competent to propose such votes.[k] But it is customary, under ordinary circumstances, to assign this duty to the parliamentary secretary of the particular department.

In the event of the Secretary of State for War and the First Lord of the Admiralty being members of the House of Lords, the under secretaries of these departments become their official representatives in the Lower House. Otherwise, they ought not to move the estimates for their respective departments, except in the presence of their official superior—who is the responsible minister to afford the necessary explanations upon matters of importance to parliament—unless with the intention of merely taking a vote 'on account,' or upon a minor question.[l]

The Civil Service Estimates are ordinarily moved by the Financial Secretary to the Treasury, in presence of the Chancellor of the Exchequer and other ministers for whose departments the supply is required, who should be at hand to explain or defend a vote or item that may be objected to.[m] Any unusual or extraordinary vote, however, would be proposed by the Chancellor of Exchequer

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[i] Hans. Deb. vol. cxxx. pp. 386–389.

[j] Commons' Journals, vol. cix. p. 296.

[k] See May, ed. 1868, p. 553; *ante*, vol. i. p. 482, where the exceptions to this rule are stated.

[l] Hans. Deb. vol. clxxxv. p. 1818; *ibid.* vol. cxciii. p. 535.

[m] *Ibid.* vol. clxxxi. p. 1779.

himself;[n] or, at his discretion, by the First Lord of the Treasury, notwithstanding that the Chancellor of the Exchequer may be present.[o]

Votes moved by an ex-minister.

On March 4, 1867, General Peel, Secretary of State for War, having differed with his colleagues upon the Reform question, retired from the ministry, and was replaced by Sir John Pakington, on whose behalf a new writ was issued on March 8. On March 7, however, General Peel being still the nominal Secretary for War, with the consent of the ministry moved the Army Estimates, in committee of supply, having expressed his willingness and desire to have an opportunity of explaining to the House 'those estimates and that policy which he had recommended to his colleagues, and which they had adopted.' No objection was made to this proceeding, and, after the general had finished his statement, the vote for the number of men was taken.[p]

By a Secretary in the absence of his chief.

On March 14, 1867, a question of procedure arose upon the Navy Estimates. The newly appointed First Lord of the Admiralty had gone for re-election, and the ex-First Lord, who had been appointed Minister for War, had not yet resumed his place in the House, accordingly the Secretary of the Admiralty, Lord H. Lennox, was charged with the moving of these Estimates. It has been already stated[q] that, upon the opening of the Army or Navy Estimates, and on moving the first vote thereon, it is usual for a discussion to take place upon the whole policy of the estimates; and that after the first vote has been agreed to, it is not competent for any member to discuss questions of general policy. Under these circumstances, it was objected (by Mr. Gladstone and others) that while the Secretary of the Admiralty was perfectly competent to move the estimates, and make the general statement thereon in Committee of Supply, the committee ought not to be asked to agree to the first vote until the responsible minister was present. If the First Lord had been a peer, then the secretary would be the recognised organ of the department in the Commons. But when the First Lord sits in the House of Commons, it would be highly inexpedient to discuss the naval policy of the government in his absence. Whatever arguments might be urged against that policy would be thrown away upon the secretary, who is the mere mouthpiece of his chief, it not being 'his business to announce a policy, or to give an opinion' of his own. A simple vote 'on account,' or a vote on a question of

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[n] Hans. Deb. vol. clxxii. p. 75; vol. clxxxi. p. 1055.

[o] *Ibid.* vol. clxxi. pp. 903–924.

[p] *Ibid.* vol. clxxxv. pp. 1310, 1448. In 1801, Mr. Pitt opened the Budget in Committee of Supply under somewhat analogous circumstances; see *ante*, vol. i. p. 81.

[q] See *ante*, vol. i. p. 482.

detail, could be agreed to, upon motion of the secretary, in the absence of the First Lord, without any irregularity; but no discussion, or vote, upon 'the principle of the estimates' should proceed under such circumstances. It was finally agreed that the Secretary of the Admiralty should be allowed, 'for the sake of the public convenience,' to make his general statement in Committee of Supply, after which, at the suggestion of Mr. Gladstone, and with the consent of the Chancellor of the Exchequer, the committee reported progress before agreeing to the first vote.[r] After the First Lord had resumed his seat the debate was renewed, and the estimates were agreed to.[s]

The Budget.

It is the obvious duty of the Chancellor of the Exchequer himself to submit the annual financial statement, usually termed 'the Budget,' to the House of Commons.[t]

But on November 28, 1867, the Chancellor of the Exchequer (Mr. Disraeli) being absent from illness, the Secretary of the Treasury undertook to submit, in Committee of Ways and Means, a financial statement and resolution in respect to the raising of funds to defray the cost of the Abyssinian expedition, for which the House had voted a supply of 2,000,000*l*. No objection was taken to this proceeding, and Mr. Gladstone complimented the secretary upon the manner in which he had discharged the duty. Moreover, on account of the temporary nature of the proposed financial arrangement, and its being liable to alteration when the annual budget should be introduced, it was unanimously agreed to permit it to be debated at once, and passed the same day, instead of adhering to the usual practice of adjourning to a future day before expressing opinions or deciding upon the merits of a financial statement.[u]

(*d.*) *Subordinate Members of the Ministry.*

Secretaries of the Treasury.

The most prominent and useful of the subordinate members of the Administration are probably the two joint Secretaries of the Treasury. But it is unnecessary to dwell upon the position and responsibility of these functionaries, as we have already directed attention to their services, as the confidential assistants of the Leader of the Government in the control of the House of Commons,[v] as well as to the official duties of the Financial Secretary in matters of supply.[w] Their depart-

[r] Hans. Deb. vol. clxxxv. pp. 1814–1857.
[s] *Ibid.* vol. clxxxvi. p. 317.
[t] May, edit. 1868, p. 560.
[u] Hans. Deb. vol. cxc. pp. 345, 357, 358.
[v] See *ante*, pp. 324, 363.
[w] *Ante*, p. 366.

mental functions will be more appropriately described in another chapter.[x]

Position of subordinate ministers.

When the responsible minister of a department of state is present, it is not usual for the secretary or under-secretary to answer questions upon departmental affairs.[y]

An under-secretary or other subordinate minister must be regarded as being merely the mouthpiece of his superior officer, and as only responsible for giving effect to the instructions of his chief, and for his personal good conduct. The political head of the department is alone responsible to parliament. 'All subordinate officers are really *bonâ fide* subordinates, and have no authority to speak for themselves in any single thing.'[z] This applies even to an under-secretary who represents his department in one House whilst his chief sits in the other, though an under-secretary or vice-president who is in this position, and is required to take a prominent part in the conduct of public affairs, is naturally supposed to have a share in the government of the department, and cannot absolve himself from a certain modified responsibility in regard to the same, notwithstanding that a much greater degree of responsibility attaches to the departmental chief, whose directions the subordinate officer is obliged to carry out, and whose authority is supreme.[a]

On March 21, 1867, on motion by a private member of the House of Commons for leave to introduce a bill to repeal the Ecclesiastical Titles Act, there being no Cabinet ministers present, but merely the Solicitor-General for Ireland representing the Government, the leaders of Opposition intimated that 'they understood his position better than to expect him to express any opinion upon a question like this.' And for his own part, 'all that he could say was, that he had no special communication with the Government on the subject.'[b]

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[x] *Post*, p. 451.

[y] Hans. Deb. vol. clxxxviii. p. 1520.

[z] Rep. Com. on Foreign Trade, Commons' Papers, 1864, vol. vii.; Evid. 1771, 2234.

[a] See Rep. Com. on Education, Commons' Papers, 1865, vol. vi.; Evid. 689, 695, 1896, &c. 2410, 2901, &c.

[b] Hans. Deb. vol. clxxxvi. pp. 363–370.

(e.) *The Law Officers of the Crown.*

Law business in House of Lords.

The legal business of the crown in the House of Lords is conducted by the Lord Chancellor, who is *ex-officio* Speaker of the House and a prominent and influential member of the Cabinet in every administration. He is chiefly responsible for the administration of justice throughout the kingdom, in connection with the Home Secretary. And he usually takes an active part in furthering the measures of Government in the House of Lords.[c]

The common law judges, also, it may be observed (not being of the peerage), may be specially summoned to attend as assistants in the House of Lords, and their opinion may be asked by the House, not only in relation to points of law and equity when their lordships are sitting as a court of judicature, but also upon public bills pending in Parliament, and as to the strict legal construction of existing statutes. But they will decline to answer any question which they consider should not have been propounded to them—or which involves points likely to come before them in the courts below.[d]

In the Commons.

The Home Secretary is generally a member of the House of Commons, and is answerable therein for all matters relating to the administration of justice, and especially for the exercise of the prerogative of mercy, which is administered through him.[e]

Crown law officers.

The law officers of the crown who are now considered eligible to sit in the House of Commons, are the Attorney-General, the Solicitor-General, and the Judge Advocate-General; together with the Lord Advocate, and the Solicitor-General for Scotland, and the Attorney and Solicitor-Generals for Ireland.[f] None of these func-

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[c] See *post*, p. 689.

[d] See cases cited, Macqueen, House of Lords, pp. 46–61. Mirror of Parl. 1831–2, p. 442. See also *ibid.* 1840, p. 2370; Hans. Deb. vol. lxv. p. 1122; *ibid.* vol. cxliv. pp. 2033, 2050.

[e] See *ante*, vol. i. p. 344.

[f] See Return on Offices of Profit, Commons' Papers, 1867, vol. lvi. p. 19.

tionaries are ever included in the Cabinet. Their continuous presence in the House of Commons, though very desirable and most serviceable, is not therefore essential or obligatory.[g]

It is an acknowledged principle that the House of Commons ought not to proceed to make any alterations in the administration of law and equity, except with the sanction and authority of the law officers of the crown.[h] This sanction cannot be effectually given unless by the presence of those functionaries in Parliament, when questions of legal reform are under consideration, in order that they may advise as to the proper method of accomplishing the same. Wherefore, it has been the uniform practice, from a period anterior to the Revolution of 1688, to require the presence of the Attorney and Solicitor-Generals of England in the House of Commons,[i] to assist in framing laws, and in carrying on the government of the crown in Parliament.

In 1826, when Mr. Canning was leading the House of Commons in the ministry of Lord Liverpool, he wrote to the Premier representing that there were three legal offices, usually parliamentary, 'which have been, for the first time, suffered to go out of parliament by the present government, and which, if not restored in the next House of Commons, will be considered as lost by desuetude,' viz.: 'the Master of the Rolls, the Judge Advocate, and the King's Advocate; all important in the highest degree to the well carrying on of the king's business in the House of Commons, and all within my memory, and till of very late years useful and efficient supporters of the administration.' After pointing out the important services that could be rendered by these officers, he concluded by a protest to his chief 'against all these defalcations from the constitutional and accustomed support of the government

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[g] See *ante*, p. 236.

[h] Mr. Roebuck and Mr. Walpole, in Hans. Deb. vol. clxii. pp. 1338, 1340.

[i] See *ante*, p. 80, *post*, p. 699.

in the House of Commons.'[j] Since this letter was written, the King's Advocate-General, though still holding office during pleasure, has ceased to be accounted as a political functionary, and is therefore not regarded as being eligible for the House of Commons.[k] He is in a similar position in this respect to the Master of the Rolls, who, as we have seen, though not legally disqualified, is no longer required or expected to find a seat in Parliament.[l] It therefore rests with the Attorney and Solicitor-Generals, and the other officers above enumerated, to represent the legal element of the administration in the popular chamber.

Questions to law officers.

It is customary for members to address questions to the law officers of the crown in the House of Commons, for information upon legal points, arising out of measures before Parliament, or relating to matters of public interest. But it is not imperative upon these functionaries to reply to such questions. They are the legal advisers of the Government, and in that capacity are confidential officers, and 'nothing could be more inconvenient' than that they should be liable to be interrogated by all members who might desire to be enlightened on a point of law.[m] But within reasonable limits, and according to the discretion of the law officers themselves, the practice is attended with considerable advantage to members, and to the public generally.

On March 30, 1854, the Attorney-General was invited by the leader of the House of Commons (Lord John Russell) to reply to a question put by a private member upon a point of international law, 'so far as he thought it consistent with his duty to do so,' it being 'obvious that it would be very improper for members of the government to give answers to questions which might become the subject of controversy in the courts of law.' Whereupon the Attorney-General gave the information required.[n]

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[j] Stapleton, Canning and his Times, p. 611.

[k] See *post*, p. 703.

[l] See *ante*, p. 263.

[m] Sir Roundell Palmer (ex-Attorney-General), Hans. Deb. vol. clxxxv. p. 1334. And see *ibid.* vol. clxxxvii. p. 1493. Mirror of Parl. 1831-2, p. 3523.

[n] Hans. Deb. vol. cxxxii. pp. 62–65.

Accordingly, it is not unusual for the several law officers of the crown above mentioned to reply to the enquiries of members in the House of Commons for information upon points of law arising in debate[o]—or with a view to determine the necessity for additional legislation upon a particular subject[p]—or to explain the legal effect of certain provisions in a Bill before the House[q]—or in regard to a legal question of interest to the whole community[r]—or as to the legality of the conduct of public functionaries in particular cases.[s]

The House should not require from crown law officers an opinion on matters of policy, but should simply ask for information as to matters of fact.[t] Neither should they be called upon to define beforehand a point which is determinable by a judge and jury,[u] or which is about to be brought before a legal tribunal.[v] Finally, it should be understood that legal information given to the House by the crown officers merely expresses their 'individual opinion,'[w] and that it cannot be received as conclusive authority, however much it may be entitled to respectful consideration.[x]

On July 3, 1868, an Irish member moved in the House of Commons the adoption of an abstract resolution to declare that a writ of error should be issued in criminal cases as a matter of right and not of grace. The motion was aimed at the Attorney-General for Ireland, by whom the contrary doctrine had been asserted upon a recent occasion; and the mover severely censured that officer for his assumed erroneous construction of the law. The Irish Attorney-General vindicated his conduct upon the legal question, and being sustained by the Attorney-General for England the motion was withdrawn.[y]

Scotch business.

The Lord-Advocate is charged with the conduct of the legal business of the crown in the House of Commons

[o] Hans. Deb. vol. clxxxv. p. 1140.
[p] *Ibid.* vol. clxxxvi. p. 902.
[q] *Ibid.* vol. clxxxviii. p. 608.
[r] Mirror of Parl. 1839, p. 4212.
[s] Mirror of Parl. 1833, p. 3746; *ibid.* 1834, p. 3399.
[t] Hans. Deb. vol. clxxxv. p. 1331.
[u] *Ibid.* vol. clxxxviii. pp. 542, 543.
[v] *Ibid.* vol. clxxxii. p. 288.
[w] *Ibid.* vol. cxc. pp. 126, 127, 515.
[x] Mirror of Parl. 1839, p. 4205.
[y] Hans. Deb. vol. cxciii. pp. 655–666.

relating to Scotland. He is sometimes assisted by the Solicitor-General for Scotland; but it rarely happens that both these officers have seats in Parliament together. The Home Secretary, as a Cabinet minister, is directly responsible to Parliament for all Scottish affairs, but he is advised and assisted by the Lord Advocate, who acts to a partial extent as an under-secretary of state for that part of the United Kingdom.[z]

Ministers for Scotland.

There has been for several years past a growing desire for some change in the position and number of the members of the administration on behalf of Scotland. These consist, at present, of the Lord Advocate, and of a junior Lord of the Treasury,[a] with the help of the Solicitor-General for Scotland, when he may happen to be a member of the House. During the last half century the progress of Scotland in wealth and population has been most remarkable, and unparalleled in any country of the Old World.[b] Under such circumstances it is natural that additional facilities for transacting Scottish business in the House of Commons should be required.

On June 15, 1858, a motion was made in the House in favour of the appointment of a Secretary of State for Scotland, to perform the political duties at present assigned to the Lord Advocate. Being opposed by the leading members of the Government and of the Opposition the motion was negatived.[c] On June 3, 1864, a motion was made for the appointment of a select committee to enquire how far the number of the members of the administration charged with the conduct of Scottish affairs, and having seats in Parliament, is commensurate with the requirements of that part of the United Kingdom. This motion obtained few supporters, and after a brief discussion was withdrawn.[d]

The Lord Advocate appointed by the Derby ministry in July 1866, having failed to get re-elected, resigned office. His successor,

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[z] See *post*, p. 710.

[a] See *post*, p. 450.

[b] Hans. Deb. vol. cxcii. p. 436. See a debate in the House of Lords, on April 6, 1854, upon a motion in favour of the appointment of an additional Secretary of State for Scotland, a larger representation in the House of Commons, and the restoration of the ancient Palace of Holyrood. After a short debate, the previous question was put thereon, and negatived. *Ibid.* vol. cxxxii. pp. 496-522.

[c] *Ibid.* vol. cl. pp. 2118-2150.

[d] *Ibid.* vol. clxxv. pp. 1168-1199.

however, was unable to get a seat in the House until December 1867. Meanwhile great inconvenience was occasioned.[e] On March 22, 1867, a Scotch member enquired of the Home Secretary whether any changes were contemplated in the management of Scotch business in the House; adding that there was a growing feeling in Scotland in favour of the appointment of an under secretary of state in the home department to perform the political functions of the Lord Advocate, leaving to the latter the professional duties. In reply, the Home Secretary (Mr. Walpole) admitted that both in and out of the House there was an increasing desire 'that some civilian in the shape of an assistant or under-secretary should be the medium of communication with the people of Scotland instead of the Lord Advocate' and promised that the matter should be attentively considered by the Government. He also confessed that he was unable to conduct Scotch legislation without the aid of the Lord Advocate; although for the present the Scotch members could avail themselves of the services of the Scotch Lord of the Treasury on all such subjects, whilst out of the House the Lord Advocate would continue to communicate with them.[f] On June 20, however, Mr. Gathorne Hardy, who had succeeded Mr. Walpole as Home Secretary, intimated that 'he did not think there was a sufficiency of business to render necessary the appointment of a distinct under-secretary of state for this particular purpose.' Agreeing that 'it was a great misfortune' that the Lord Advocate should be without a seat, 'he hoped that at some time Scotland would do him the justice to give him one.' Until then, the Scotch Lord of the Treasury would do his best to compensate for his absence.[g] Early in the following session, one of the members for the English borough of Thetford retired, and the Lord Advocate was elected in his stead.[h]

Meetings of Scotch members.

It has long been the practice for Scottish members in the House of Commons to meet together, occasionally, during a session, to discuss, in a friendly and confidential way, all questions pending in Parliament, which affect the interests of Scotland. They are thus enabled to discover points of difference, and to arrive at a mutual agreement upon such measures. They then communicate their views, in an informal manner, to the Lord Advocate, who, without pledging himself to any particular course, is generally materially influenced by the opinions thus

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[e] See *ante*, p. 237.

[f] Hans. Deb. vol. clxxxvi. pp. 397, 408.

[g] *Ibid.* vol. clxxxviii. p. 167.

[h] Dod, Parl. Comp. 1868, p. 134.

expressed. Sometimes, the Lord Advocate will himself convene and preside at a meeting of the Scotch members, for a similar purpose. It is indisputable that the harmony and success of legislation for Scotland has been materially promoted by these conferences.[i]

III. *The responsibility of Ministers of the Crown to Parliament.*

1. In matters of complaint against particular Ministers.

Complaints against particular ministers.

Notwithstanding the modern rule of parliamentary government, whereby responsibility is attached to the whole administration for the acts of the several members of which the same is composed, the ancient rule that 'the constitution of this country always selects for responsibility the individual minister who does any particular act'[j] continues to hold good, and is directly applicable in cases of personal misconduct, for which the collective administration decline to be answerable.

The growth of the principle of collective ministerial responsibility was, as we have seen, very gradual, and its entire acceptance as a constitutional dogma of but recent date.[k] So lately as in the year 1806, Mr. Fox, when Secretary of State, repudiated the notion of considering the whole Cabinet to be responsible for every ministerial act, claiming that there was a greater security against wrong doing in holding each particular minister directly if not exclusively responsible to Parliament and to the country for the management of his own department. But the fallacy of this position was exposed by Lord Castlereagh, who showed that the proceedings of the House of Commons in regard to the Partition Treaties, in 1698, proved that even at that early period all the prominent members of the ministry were equally held

[i] See Hans. Deb. vol. clxxv. pp. 1173, 1179, 1197, 1490. *Ibid.* vol. clxxviii. p. 1571; vol. clxxix. p. 1199; vol. clxxxi. pp. 510, 512.

[j] Earl Grey, in Parl. Deb. vol. xviii. p. 1075.

[k] See *ante*, p. 109.

accountable for a particular act of public policy, and not merely the minister who had been instrumental in giving effect to the same.[1] The true doctrine on this subject was afterwards enunciated by the Earl of Derby, in the following terms: 'The essence of responsible government is, that mutual bond of responsibility one for another, wherein a government, acting by party, go together, frame their measures in concert, and where if one member falls to the ground, the others, almost as a matter of course, fall with him.'[m]

Collective responsibility.

But the application of this principle would be often partial and insufficient for the ends of justice, were it not for the exception implied in Lord Derby's definition, and which admits of a definite and unqualified responsibility being exclusively attached to a minister of the crown, who is proved to have done anything which renders him personally liable to the censure of Parliament, or to punishment by legal process.[n] While the general responsibility of the whole administration would not suffice to screen such an one from the consequences of his own misdeeds, neither would it necessarily follow that his colleagues should be made accountable for the wrongful acts of a minister in a matter which peculiarly concerned his own department, unless they voluntarily assumed a share of the responsibility, or were proved to have been implicated therein.

Does not extend to personal misconduct.

The following are the leading cases of complaints in Parliament in reference to the misconduct of particular ministers. In none of these cases, did the administration interpose to prevent enquiry; nor did they venture to

[1] Parl. Deb. vol. vi. pp. 310–327. And see the debates in the House of Commons on July 9, 1782, when a particular act of the late ministry having been questioned, Mr. Fox himself said that he had been one of that ministry, 'and although he was not the person in whose department it lay to advise the king on the subject, still he held himself responsible to Parliament for the advice that was given.' Parl. Hist. vol. xxiii. p. 159. See also Edinb. Review, vol. cviii. p. 303. And *ante*, vol. i. p. 42.

[m] Hans. Deb. vol. cxxxiv. p. 834.

[n] As to illegal or oppressive acts by individual ministers, see *ante*, vol. i. p. 299.

assume responsibility for the acts alleged to have been committed; wherefore the censure of Parliament was confined, or, as the case might be, its investigations limited upon each occasion, to the conduct of the individual minister, without any attempt being made to affix any portion of the blame upon his colleagues.

Cases of complaints against a minister.

In 1805, Lord Melville, who was then First Lord of the Admiralty, was impeached by the House of Commons for certain irregularities committed while holding the office of Treasurer of the Navy. After the criminatory vote had been agreed to by the House, Lord Melville resigned his ministerial office. It was nevertheless deemed expedient to erase his name from the list of Privy Councillors; although he was afterwards acquitted of the charges preferred against him.[o]

On May 14, 1806, resolutions were moved in the House of Commons, charging the Earl of St. Vincent with negligence, misconduct, and dereliction of duty, whilst he held the office of First Lord of the Admiralty, which he had resigned two years previously. The charges were discussed on their merits, and it appearing that they were quite unfounded, they were negatived without a division. Whereupon Mr. Secretary Fox proposed a vote of thanks to Earl St. Vincent for his naval administration, which was agreed to.[p]

In 1809, H.R.H. the Duke of York was charged with conniving at the corrupt sale of military commissions, and though exculpated after enquiry by the House of Commons, he resigned his office.[q]

In 1810, the Earl of Chatham, who commanded the unfortunate Walcheren Expedition, and who was also a Cabinet minister, was censured by the House of Commons for having irregularly and unconstitutionally reported directly to the king, in regard to that expedition, instead of transmitting his report through the proper channel.[r]

In 1825, Lord Chancellor Eldon's delays in adjudicating upon cases before the Court of Chancery gave rise to a motion in the House of Commons for a return of the causes pending 'during the last eighteen years, wherein judgment has not yet been given,' which was allowed to pass, though it gave great offence to the Chancellor, who 'almost came to a determination,' after disposing of these arrears, to resign his office. This investigation led to the introduction, by ministers, of a Bill to expedite proceedings in Chancery, and stimulated Lord Eldon to greater activity, without occasioning any ministerial difficulties.[s]

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[o] State Trials, vol. xxix. pp. 549–1481.

[p] Parl. Deb. vol. vii. pp. 158–214.

[q] See *ante*, vol. i. p. 409.

[r] *Ante*, vol. i. p. 171.

[s] Campbell, Chancellors, vol. vii. pp. 419–429.

In 1844, Sir James Graham, the Home Secretary, complained to the House of Commons of remarks made by a member of the House in a speech delivered at Leeds, which reflected injuriously upon his personal conduct as a member of Parliament and of the Government. Upon the advice of Sir Robert Peel, the Leader of the House, the complaint was fully investigated, after which, resolutions, declaring that the charges were unfounded and calumnious, were agreed to by the House.[t]

During a debate in the House of Commons on March 11, 1845, on the affairs of New Zealand, a charge was preferred against Lord Stanley, the Secretary of State for the Colonies, by a member, connected with and representing the New Zealand Company, to the effect that his lordship, after agreeing to a certain arrangement with the Company, in 1843, and undertaking to give Instructions to the Governor of New Zealand in accordance therewith, had afterwards transmitted secret Instructions to the Governor which were entirely inconsistent with his previous engagement to the Company.[u] It was agreed that an opportunity should be afforded to the Colonial Secretary of rebutting this accusation. Accordingly, on March 18, the Under-Secretary for the Colonies (Lord Stanley being a peer), on a motion for papers, entered into full explanations in vindication of his chief. From the debate which ensued it was evident that the House acquitted the Colonial Secretary 'of any intention to deceive, or of any actual deception.'[v]

On February 29, 1864, the attention of the House was called to a recent trial in Paris of certain Italians for a conspiracy to assassinate the Emperor of the French, at which the name of Mr. Stansfeld, a member of the House, and the Civil Lord of the Admiralty, was mentioned as having been in personal communication with some of the conspirators. Mr. Stansfeld warmly rebutted the implication, and expressed his abhorrence of the crime.[w] Nevertheless, on March 17 it was moved to resolve 'That the statement of the Procureur-Général on the trial of Greco, implicating a member of this House and of her Majesty's Government, in the plot for the assassination of our ally the Emperor of the French, deserves the serious consideration of this House.' After much debate, the motion was negatived by a majority of ten.[x] But this having been

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[t] Com. Journals, vol. xcix. pp. 235, 239. Hans. Deb. vol. lxxiv. pp. 236, 299-308.

[u] Hans. Deb. vol. lxxviii. p. 645.

[v] *Ibid.* pp. 896, 1094-1137.

[w] *Ibid.* vol. clxxiii. p. 1255, and see *ibid.* p. 1931.

[x] *Ibid.* vol. clxxiv. pp. 250-283. Mr. Stansfeld was present in the House during this debate, and voted against the motion. This proceeding was afterwards commented upon, but the Speaker decided that it was no infringement of the rule forbidding the vote of a member upon a question in which he was peculiarly interested. *Ibid.* p. 340.

evidently a party vote, it was generally supposed that Mr. Stansfeld, considering the position wherein by an act of indiscretion he had placed the House and the Government, should have resigned. It appeared, however, that at the outset of the enquiry he had placed his office at the disposal of the crown, but that the Premier (Lord Palmerston) had refused to accept of his resignation. This occasioned another debate.[y] At the next sitting of the House, Mr. Stansfeld announced that, having become convinced that he had ceased to bring strength to the Government, and fearing that he might prove a source of difficulty and a cause of embarrassment to them, he had resigned his office. He then proceeded to give satisfactory explanations as to his former conduct. He was followed by Lord Palmerston, who spoke in high praise of Mr Stansfeld, and declared that his resignation, which was much regretted, had been entirely voluntary. The matter was then dropped.[z]

Complaints covered by collective responsibility.

In the following cases, the ministry assumed entire responsibility for the proceedings complained of; and the question was accordingly dealt with by the House as one of confidence in the administration.

On September 4, 1835, Mr. Hume submitted to the House of Commons a series of resolutions, condemnatory of the terms upon which the late West Indian Compensation Loan had been contracted by Mr. Spring Rice, the Chancellor of the Exchequer; whereby, as he alleged, a serious loss had been sustained by the public. The Chancellor of the Exchequer rose immediately and entered into an elaborate defence of the transaction; admitting, however, that it was one 'on which the House ought to look with extreme attention, if not with some jealousy,' that he had no right to complain of the present motion; and that if it were substantiated, it should be followed up by an address to the king to remove him as well from the office he held as from his councils for ever. He concluded his defence by moving, 'That the terms on which the said loan had been contracted were such as to afford the most satisfactory proof of the public credit of the British Empire.' Having undertaken to refer Mr. Hume's resolutions to an eminent

[y] Hans. Deb. vol. clxxiv. p. 322.

[z] *Ibid.* pp. 396–401. See also the circumstances, already stated, attending the resignation by Mr. Lowe, in 1864, of the Vice-presidency of the Education Committee of the Privy Council, in vindication of his 'personal honour,' which he considered to have been impugned by a resolution of the House of Commons (*ante*, vol. i. p. 267). Also, the resignation of Lord Chancellor Westbury, in 1866, upon the passing of a resolution by the House of Commons, which imputed to him 'a laxity of practice and a want of caution with regard to the public interests' in his capacity of Lord Chancellor. *Ibid.* p. 426.

accountant and calculator, the Chancellor of the Exchequer's amendment was agreed to without a division.[a]

On March 6, 1838, Sir William Molesworth moved, in the House of Commons, an address to the queen to declare that (Lord Glenelg) the present Secretary of State for the Colonies did not enjoy the confidence of the House or of the country, being deficient in the qualities of 'diligence, forethought, judgment, activity, and firmness.' Ministers at once met this motion by asking the House to consider it, with them, as an attack on the Government generally; for 'in this country, the Government is not an administration of separate and distinct departments; but, as is well known, the measures of each department are submitted to the consideration of the Cabinet, and the Cabinet is responsible in its individual capacity for the policy of each department, though the execution of the measures may rest with the departments themselves.[b] After a long debate on the colonial policy of the Government, the motion was negatived on division.[c]

In the sessions of 1844 and 1845, complaints were made to the House of Commons by Mr. T. S. Duncombe against Sir James Graham, the Home Secretary, for an alleged arbitrary and illegal exercise of power in causing certain letters to be opened at the Post Office. Committees of secrecy were appointed by both Houses (that of the Commons being proposed by Sir James Graham himself) to enquire into the matter, but it appeared by their reports that nothing had been done by the Home Secretary abusively, or without legal warrant. Attempts were then made in both Houses to obtain the consent of Parliament to an amendment of the law, so as to prohibit the continuance of the practice. But ministers, while consenting to enquiry, justified the conduct of the Home Secretary, and assumed entire responsibility for the same.[d]

On June 17, 1850, a resolution, proposed by Lord Stanley, was agreed to by the House of Lords, censuring the policy of the Government in relation to Greece. This resolution was especially aimed at the conduct of Lord Palmerston, the Foreign Secretary. It was met by a counter-resolution, agreed to by the House of Commons after a protracted debate, approving of that policy. The defence was principally undertaken by Lord Palmerston, whose speech on this occasion is said to have been one of the finest ever delivered in Parliament.[e] Of this debate, Mr. Disraeli (as a leader

[a] Mirror of Parl. 1835, pp. 2946–2952.

[b] Lord Palmerston, Mirror of Parl. 1838, p. 2429.

[c] *Ibid.* pp. 2415, 2530; see Sir R. Peel's comments on this case, *ibid.* 1839, p. 1722, and Hans. Deb. vol. cl. p. 582.

[d] Hans. Deb. vol. lxxv. pp. 892, 974, 1264; vol. lxxvi. p. 311; vol. lxxvii. pp. 668, 834, 932; vol. lxxix. p. 307; vol. lxxx. p. 1033; Commons' Papers, 1844, vol. xiv. pp. 501, 505; and see Broom, Const. Law, p. 616; May, Const. Hist. vol. ii. p. 294.

[e] Hans. Deb. vol. cxi. p. 1332; vol. cxii. pp. 107, 380, 739.

of the Opposition) afterwards remarked that he approved of the manner in which it had been conducted, for although the motion 'involved a direct impugnment of the policy of the department over which Lord Palmerston presided,' he repudiated the idea that 'the transactions of the particular minister could be dissociated from the policy of the complete Cabinet.'[f]

On February 19, 1852, a vote of censure was moved in the House of Commons directed against the conduct of Lord Clarendon, the Lord-Lieutenant of Ireland, in paying a newspaper editor out of the public funds, for writing in defence of the Government during a time of disaffection in Ireland. The motion was as follows: 'That, in the opinion of this House, the transactions which appear recently to have taken place between the Irish Government and the editor of a Dublin newspaper are of a nature to weaken the authority of the executive, and to reflect discredit on the administration of public affairs.' The Premier (Lord John Russell) defended his colleague, and alleged that such practices, though never resorted to in England, had taken place in Ireland under different administrations, and under existing circumstances in that country were not unjustifiable. The motion was negatived on a division.[g]

Cases wherein offending minister resigned.

In the following cases, the ministry were relieved from the responsibility they would otherwise have incurred for the conduct of a colleague upon a particular occasion, by the resignation of the minister whose proceedings had been questioned, and by their own disavowal of the act complained of.

In June 1855, during the progress of the war with Russia, Lord John Russell, being then Secretary of State for the Colonies, was sent by the Government on a special mission to Vienna. He there entered into engagements for a treaty of peace between the contending powers, which he brought home and laid before the Cabinet. His colleagues, however, did not approve of the treaty, and the matter dropped. The war proceeded, and Lord John Russell, notwithstanding his disapproval of it, continued in the Cabinet. These facts having leaked out, Lord John Russell was questioned in the House of Commons on the subject, when he justified his own conduct and position, but not to the satisfaction of the House. Whereupon Sir E. B. Lytton notified his intention to move a vote of censure upon his lordship, as follows: 'That the conduct of our minister in the recent negotiations at Vienna has, in the opinion of this

[f] Hans. Deb. vol. cxix. p. 137.
[g] *Ibid.* vol. cxix. pp. 764–824.

House, shaken the confidence of this country in those to whom its affairs are entrusted.'[h] It being probable that this motion would pass, which would have placed the Cabinet as well as Lord John Russell in an awkward predicament, his lordship forestalled the action of the House by announcing, on July 16, his resignation of office. It was hinted that his colleagues had urged his retirement, although Lord Palmerston undertook to assume the responsibility of defending him if he chose to remain. At all events, his resignation had no sooner been notified to the House, than Lord Palmerston gave assurances that the projected treaty had been abandoned, and declared that the Government were united in a determination to prosecute the war with vigour. The hostile motion was then withdrawn.[i]

In May 1858, the Earl of Ellenborough, being then President of the Board of Control, wrote a despatch to Lord Canning, Governor-General of India, disapproving of a proclamation about to be issued by him to the natives of India, in regard to their conduct during the Indian mutiny, on account of its undue severity. This despatch was of a secret and confidential nature, yet Lord Ellenborough caused it to be communicated to both Houses of Parliament prematurely, and without the sanction of the Premier (the Earl of Derby) or of any other members of the Cabinet. Opinions adverse to the despatch having been generally expressed in Parliament, his lordship promptly assumed entire responsibility for it; and transmitted to the queen direct (and not, as is customary, through the Premier) his resignation of office; notifying his colleagues afterwards of the step he had taken. Shortly after this occurrence, on May 14, the Earl of Shaftesbury submitted to the House of Lords resolutions disapproving of the despatch, and censuring its premature publication. In moving these resolutions, Lord Shaftesbury urged that the ministry were bound by the act of their colleague, and ought to have resigned as a body, and not permitted Lord Ellenborough to be the sole sufferer for an act which must be regarded, constitutionally, as proceeding from the Cabinet collectively. In reply, it was contended by the Premier and by the Lord Chancellor that 'the responsibility of a Cabinet for the acts of each of its members must cease when a particular member of a Cabinet assumes to himself the blame of any acts, and quits the Cabinet in consequence;' and that while by 'remaining in office and acting together, all the members take upon themselves a retrospective responsibility for what any colleague has done,' that responsibility ceases if they disavow and disapprove of the particular act upon the first occasion that it is publicly called in question. This doctrine,

[h] Annual Register, 1855, p. 154. [i] Hans. Deb. vol. cxxxix. pp. 889-944, 1204; and see *ibid*, vol. cl. p. 659.

Lord Derby showed, was confirmed by the above-mentioned case of Lord John Russell, in 1855. As regarded the substance of Lord Ellenborough's despatch, the Premier declared that he adopted it, adhered to it, and stood by it; but regretted and disapproved of its premature publication. He alleged, moreover, that the severe expressions made use of in the despatch were chiefly attributable to the fact that certain information in reference to the intended proclamation, which had been communicated by Lord Canning to the ex-President of the Board of Control (Mr. Vernon Smith), with the idea that he was still in office, had been withheld from the new Government. At the close of this debate, the previous question was put on the proposed resolutions, and negatived.[j] On the same day, a similar vote of censure was moved in the House of Commons, but condemning in more explicit terms the writing of the despatch, as well as its premature publication. An amendment was proposed thereto, to resolve that the House would abstain from expressing any opinion on Lord Canning's proclamation until it had further information on the subject. After four nights' debate, the resolution and amendment were both withdrawn; the ministry having rested their defence on similar grounds to those taken in the House of Lords.[k] In the course of the debate, Mr. Vernon Smith (ex-President of the Board of Control) was induced, after repeated refusals, to communicate to the House, through Lord Palmerston, the extracts on public affairs from letters received by him since his resignation of office, from Lord Canning.[l]

Past misconduct of ministers, how dealt with.

The extent to which the responsibility of a minister of the crown for misbehaviour in office remains in operation after his retirement from the Cabinet, and the appropriate proceedings to bring such an offender within the reach of parliamentary censure and punishment, were the subjects of discussion in the House of Commons in 1855, after the report of the Sebastopol Committee, which exposed a grievous amount of mismanagement on the part of certain ministers who held office during the early stages of the Russian war. The following conclusions were arrived at upon that occasion, viz.: that a new ministry should not be held accountable for the misconduct of one of their number under a previous administration; and that the

[j] Hans. Deb. vol. cl. pp. 579–670.
[k] *Ibid.* pp. 674–1060.
[l] *Ibid.* p. 925; see comments upon this case, in Smith, Parl. Remembrancer, 1857–8, p. 77.

only available methods of procedure against an ex-minister of the crown, were by parliamentary impeachment; or, by addressing the crown to remove his name from the list of the privy council, or otherwise to proceed against him by due process of law.[a]

Responsibility to Parliament permits of and ensures a greater degree of vigilance over the acts of public men than was attainable under prerogative government. Consequently, it tends to prevent the commission of political crimes, such as disgraced our history in former periods, and which compelled a recourse to the extreme measure of impeachment. On the other hand, it has substituted the milder punishments of censure and deprivation from office for such ministers as have justly incurred the displeasure of Parliament by their incapacity or misgovernment. Impeachments, however, though rarely necessary under our modern political system, may still be resorted to on suitable occasions.[b] Since Walpole's downfall—when the last attempt was ineffectually made to impeach a minister of the crown for political offences[c]—it has been the salutary practice, although not strictly according to the theory of our constitution, to consider the loss of office and the public disapprobation as punishments sufficient for errors in the administration not imputable to personal corruption.[d] But should any case of administrative abuse— either by a responsible minister of the crown, or by any other high public functionary—hereafter occur, of sufficient gravity to

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[a] See *ante*, vol. i. pp. 334–336. The last impeachment in England was in 1805, in the case of Lord Melville, for alleged malversation in office, see *ante*, p. 378. After the resignation of Mr. Pitt, in 1801, a motion was made in the House of Commons for an address to the king, to thank his Majesty 'for having been pleased to remove the Rt. Hon. W. Pitt from his councils;' but an amendment was proposed, to substitute resolutions expressing a high sense of the value of Mr. Pitt's public services, and of the wisdom, energy, and firmness of the government during his administration. This amendment was agreed to by the House. Com. Journ. vol. lvii. p. 419.

[b] See May, Const. Hist. vol. i. p. 464; May, Prac. of Parl. ch. xxiii; and see Sir W. Molesworth's speech, Mirror of Parl. 1836, p. 1306.

[c] See *ante*, p. 125.

[d] Macaulay, Essays, vol. i. on Hallam's Const. History, p. 204.

justify a proceeding of such peculiar solemnity, it would be appropriate to have recourse to this ancient remedy for the investigation and redress of political offences.[e]

Neglect of his duties by a minister.

In the event of the head of a responsible department of state absenting himself, from whatever cause, from the fulfilment of his official duties, it would be proper to take notice of the matter, in Parliament, and, if necessary, to invite action thereon.

When, in February, 1855, Lord John Russell was sent as plenipotentiary to Vienna, to discuss with the representatives of other powers the terms on which a treaty of peace with Russia might be concluded, he was not a member of the administration; but, upon the reconstruction of the cabinet, on February 22, a telegram was transmitted to his lordship at Vienna, offering him the seals of the Colonial Office, which he immediately accepted.[f] On March 9, the Earl of Derby took notice, in the House of Lords, of 'the very great inconvenience and injury to the public service' occasioned by the absence from the country, and from his official duties, of the Colonial Secretary; more especially as no Under-Secretary had been yet appointed to represent the department in the House of Commons. Earl Granville (the President of the Council) replied, that for the present the Home Secretary (Sir George Grey) would also take charge of the Colonial department, being 'formally and technically' competent, as a Secretary of State, to control any branch of the Secretariat.[g] On March 12, Sir John Pakington called attention, in the House of Commons, to the same matter. He characterised the absence of the Colonial Secretary on a special mission as 'most unusual and extremely unsatisfactory;' the only precedent for it being when a Foreign Secretary had gone abroad to conduct negotiations, which, however, were closely connected with his particular department. Lord Palmerston (the prime minister) defended the arrangement; alleging that it would be of brief duration, and that, meanwhile, the colonial business would not be neglected.[h] On March 30, Sir John Pakington again mooted the matter, intimating that it was understood that Sir G. Grey had been obliged to relinquish the additional duties laid upon him, and that they had been assumed by the Premier himself. He gave notice that if, after the Easter holidays, the

[e] The expediency of proceeding by impeachment against Governor Eyre was mooted in the House of Commons in 1866. Hans. Deb. vol. clxxxiv. p. 1838.

[f] Annual Register, 1855, p. 53; Appx. pp. 208, 209.

[g] Hans. Deb. vol. cxxxvii. p. 336; and see *post*, p. 493.

[h] Hans. Deb. vol. cxxxvii. pp. 419–425.

interests of the Colonial Office were not better attended to, he should take the sense of the House upon the question. Sir G. Grey admitted that the facts had been correctly stated, and that the present arrangements could not be sanctioned for any length of time; but declared that the prime minister was constitutionally competent to take temporary charge of any department.[i] Parliament was afterwards informed that Lord John Russell would probably be at his post by April 28. In point of fact, he resumed his seat in the House of Commons on April 30, when no further reference was made to his absence.[j]

2. In regard to the administration collectively.

Ministerial responsibility.

The responsibility of the ministers of the crown to Parliament, as it is now understood, is practically a responsibility to the House of Commons. For, notwithstanding the weight and authority which is properly attached to the opinion of the House of Lords upon affairs of state, the fate of a minister does not depend upon a vote in that House.[k] 'The Lords may sometimes thwart a ministry, reject or mutilate its measures, and even condemn its policy; but they are powerless to overthrow a ministry supported by the Commons, or to uphold a ministry which the Commons have condemned.'[l] But the verdict of the House of Commons itself derives its strength and efficacy from its being a true reflex of the intelligent will of the whole community. Until a vote of the Commons has been ratified by the constituent body, it will seldom be regarded as conclusively determining upon the existence

[i] *Ibid.* pp. 1405, 1415.

[j] *Ibid.* pp. 1503, 1785, 1791, 1951.

[k] See *ante*, vol. i. pp. 27–31; Hans. Deb. vol. clxxxviii. p. 133.

[l] May, Const. Hist. vol. i. p. 467. But when the second reading of the Reform Bill was negatived in the House of Lords, by a majority of 41, on the morning of October 8, 1831, it appears that the propriety of resigning was seriously discussed by the administration, and that they were only deterred from that step by the anxiety of the king that they should retain office, and by a resolution of the House of Commons, passed on October 10, declaring their unabated confidence in ministers, and their adherence to the principles of the Reform Bill. (Roebuck, Hist. of Whig Ministry, vol. ii. p. 217; Mirror of Parl. 1831, pp. 2880, 2910.) A second defeat on the Bill, in the House of Lords, in the following session, actually produced a resignation of the ministry, but being sustained by the Commons, no other administration could be formed, and they were speedily recalled to office. See *ante*, vol. i. p. 120.

of a ministry. When, in 1848, Sir Robert Peel was first informed of the overthrow of royalty in France, and the proclamation of a republic, he shrewdly remarked:—'This comes of trying to carry on a government by means of a mere majority of a chamber, without regard to the opinion out of doors.'[m]

When ministers have no majority in House of Commons.

The prerogative of the crown, in the choice, nomination, and dismissal of ministers, and the circumstances under which Parliament may lawfully interfere therewith, have already engaged our attention in a former chapter; wherein it has also been shown, that the lack of a majority in the House of Commons, favourable to the choice of the sovereign, however undesirable, and even objectionable, as a general rule, does not operate as a positive restraint or limitation upon that choice in the first instance.[n] The recognition of this principle serves not only to secure for the sovereign a legitimate share in the direction of the government, but is otherwise valuable. For it will sometimes happen that a ministry, though in possession of the general confidence of Parliament, loses for a time its popularity; and until it shall have become capable of again administering the government in harmony with the House of Commons, it is necessary and advisable that it should relinquish the helm of the state into other hands. The new administration, selected by the crown from an opposite political party, has meanwhile an opportunity of vindicating the choice of the sovereign, and of winning, in its turn, the favour of Parliament—without which it must speedily fall—by skilful administration and by an acceptable policy.[o] This is, in itself, a public advantage, for a long unbroken tenure of power on the part of any ministry has a natural tendency to beget corrupting influences, and to create an injurious sense of irresponsibility.[p]

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[m] Cobden, Political Writings, vol. ii. p. 232, *n.*

[n] See *ante*, vol. i. pp. 211–214.

[o] See Edinb. Rev. vol. cxxvi. p. 562. For cases of ministers accepting office without a majority in the House of Commons, see *ante*, vol. i. pp. 212–214; also, Hans. Deb. vol. cxci. p. 1704.

[p] Edinb. Rev. vol. cx. p. 61.

Ministerial explanations

It is of the utmost importance that there should be a complete understanding between the members of a newly-appointed administration and the Houses of Parliament. It is, therefore, customary upon the formation of a new ministry, for explanations to be immediately given in both Houses, if they are then in session, and if not, as soon as possible after they have met.[q] This course was pursued in 1782, upon the reconstruction of the Whig ministry under Lord Shelburne, consequent upon the death of the late premier, Lord Rockingham, when the principles which formed the basis whereon the new ministry was formed were communicated to the Lords and Commons on July 9 and 10.[r] In like manner, when Sir R. Peel resigned on the Corn Law question, in 1845, and, after an ineffectual attempt by Lord John Russell to form a ministry, resumed office, with enlarged powers, these events having occurred during a recess, upon the re-assembling of Parliament ministerial explanations were given in both Houses; voluntarily, by Sir R. Peel, in the Commons, and in compliance with a formal request, by the Duke of Wellington, in the Lords.[s] Until, however, the re-appointment of the Palmerston administration, in 1859, it was accounted sufficient if the ministerial statement was made by the Premier in his own chamber, without it being needful to repeat it in the other House.[t] But, owing to complaints, in 1858, of the irregularity of this course,[u] it has since been the usual, though not the invariable practice, for ministerial statements upon a change of ministry to be addressed, simultaneously, if possible, to both Houses, the consent of the crown to such disclosures having been duly obtained.[v]

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[q] Mirror of Parl. 1835, p. 61.

[r] Parl. Hist. vol. xxiii. pp. 152–189; and see *ante*, vol. i. p. 75.

[s] Hans. Deb. vol. lxxxiii. pp. 68, 165, 1003.

[t] See Lord John Russell. Hans. Deb. vol. cxxiv. p. 17.

[u] See particulars of this case below.

[v] See Hans. Deb. vol. cliv. pp. 457, 478. When Earl Russell succeeded to the premiership upon the death of Lord Palmerston, in 1866, no ministerial statement was made to either House, upon the meeting of Parliament. When the Earl of Derby took office in July, 1866, he made his statement

Ministerial explanations.

But the House 'has no right to ask for more than a general exposition of the main principles on which a government is formed. It has no right to enquire into all the conditions which may have taken place between the several members of the government.' Any conditions, however, which have been 'specially referred to' in debate by new ministers as the 'stipulations and conditions' upon which they agreed to accept office, may be suitably enquired into by other members.[w]

When Lord John Russell was appointed prime minister in 1846, upon the resignation of Sir Robert Peel, the Whig party being then in a considerable minority in the House of Commons, Mr. T. S. Duncombe enquired what were the principles on which the new government was formed, and the policy they intended to pursue? observing that, 'according to all parliamentary usage, when a new man became prime minister, he had felt it a duty due from him to the country and to the people to explain to Parliament on the first occasion the principles on which his government would be conducted.' Lord John Russell questioned the necessity for any such explanation; observing, that he had been a member of the House for more than thirty years, proclaiming and declaring his opinions on almost every occasion, so that they could now be no secret to the House. Nevertheless, in reply to enquiries that had been made in regard to his intended policy on certain great public questions, he admitted that he was bound, as far as he could, to state his opinion as to the mode in which the government should be conducted in respect to those particular questions; and he did so at considerable length, refraining, however, from pledging himself to any particular course with regard to some of those questions.[x]

On February 27, 1852, when the Earl of Derby took office, he explained the general principles upon which his administration would be conducted. But afterwards, in reply to an enquiry as to the intended policy of ministers in reference to the corn laws, Lord Derby claimed the right of abstaining from any positive declarations on the subject until after the election of a new House of Commons, when ministers would adopt a policy in accordance with the general opinions of the country therein expressed.[y] Upon the

in the House of Lords (Hans. Deb. vol. clxxxiv. p. 726), and it was not repeated to the Commons. But when Mr. Disraeli replaced Lord Derby, as Premier, a ministerial statement was addressed to each House on March 5, 1868. *Ibid.* vol. cxc. pp. 1104, 1116.

[w] Mr. Disraeli, confirmed by Mr. Gladstone. Hans. Deb. vol. cxxxviii. p. 2039.

[x] *Ibid.* vol. lxxxvii. pp. 1168–1185.

[y] *Ibid.* vol. cxix. pp. 889–906, 998–1014.

return of Earl Derby to power, in 1866, the new ministers again claimed the right of refraining from an explicit statement of certain parts of their intended policy until the subject matter thereof should be brought before Parliament in the ordinary manner, i.e. by the introduction of a bill for the settlement of the particular question.[z]

On March 1, 1858, upon the re-appointment of the Earl of Derby as premier, he stated in the House of Lords the general principles upon which he would carry on the government.[a] No similar statement was made in the Commons. Accordingly, on March 12, after the new ministers had been re-elected, Mr. Osborne expressed his surprise that no account had been given to that House of the policy intended to be pursued by ministers. He trusted that when the new Chancellor of the Exchequer asked a vote in Supply, he would be prepared to give the House some programme of his intended measures, and that the House would grant no supplies until he had done so. The House then went into committee on the Navy Estimates, when Sir J. Pakington (First Lord of the Admiralty) deprecated the observations just made, and said that the Premier had given the required information 'in another place,' and the Chancellor of the Exchequer (Mr. Disraeli) and other ministers, in their addresses to their constituents: any repetition of these statements would, he thought, be a waste of time.[b] On March 15, Mr. Osborne again adverted to the unusual course taken by ministers in omitting any explanations of their intended policy to the House, and expressed astonishment at being referred to statements made elsewhere on the subject. He also characterised Lord Derby's explanations in the House of Lords as being vague and incomplete. In reply, Mr. Disraeli denied that it was an essential or invariable practice for ministers to offer to the House a formal programme of the measures they intend to bring forward, or of the principles they profess. He showed that according to precedent, when the Premier was a peer, it was unnecessary to repeat in the Commons any statement he might have addressed to the Lords. And he declined to give the House any additional information upon the policy of the government beyond that which had already been communicated elsewhere. Lord John Russell reiterated his conviction that it was unnecessary for a minister on taking office to make a declaration of his policy, and urged upon the House their duty to abstain from an attempt to embarrass the Queen's ministers upon their first appointment, and to judge of them by their measures. After a few remarks from other members the matter was dropped.[c]

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[z] *Ibid.* vol. clxxxiv. pp. 907-909.
[a] *Ibid.* vol. cxlix. p. 22.
[b] *Ibid.* pp. 106, 107, 111.
[c] *Ibid.* pp. 182-222.

Explanations on reconstructions.

The most eminent authorities agree that when a cabinet is reconstructed, it is as necessary to enter into explanations as when a total change of government takes place; and particularly in order to avoid the imputation of intrigue.[d] But the practice in this respect is of recent origin,[e] and has not been uniform. Up to the year 1854, repeated instances occurred of partial changes in an existing administration in relation to which no information was communicated to Parliament;[f] while, on other and similar occasions prior to that time, such information was freely given. It is now afforded, as a matter of course, to both Houses.[g]

When Mr. Gladstone retired from the cabinet, before the beginning of the session of 1845, owing to a difference with his colleagues in regard to a proposed increase of the Maynooth grant, he availed himself of the debate on the address at the opening of Parliament to explain the cause of his resignation. He said that he 'freely and entirely recognised the claim of the House to be correctly informed of the motives which lead members either to accept office under the crown, or to undertake the scarcely less grave responsibility of quitting it; and, therefore, could not refuse to give some account of what had recently occurred with respect to himself.'[h]

When Lord John Russell resigned his position in Lord Aberdeen's ministry, in 1855, he notified the House of Commons, through a friend, that he 'would take an early occasion of stating the grounds' of his resignation. Next day he gave this information.[i] And when, shortly afterwards, the ministry itself was broken up, and ineffectual attempts were made, both by the Earl of Derby and by Lord John Russell, to form another, explanations were given, in both Houses, by these noblemen, as well as by the Duke of Newcastle, ex-Secretary for War.[j]

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[d] Mr. Disraeli. Mirror of Parl. 1840, pp. 24, 70.

[e] See, in regard to Mr. Pitt's resignation in 1801, *ante*, vol. i. pp. 80, 82.

[f] See Mirror of Parl. 1839, pp. 5231, 5238; *ibid.* 1840, p. 23; Hans. Deb. vol. cxxx. p. 94; *ibid.* vol. cxxxii. p. 80; vol. cxxxiv. p. 921.

[g] See Mirror of Parl. 1839, p. 114; Hans. Deb. vol. cxxxiv. p. 335; *ibid.* vol. clxxxv. pp. 1284, 1323, 1339. But when, in 1867, three Dukes were appointed to fill up vacancies in Lord Derby's ministry, occasioned by resignations the causes of which had been fully explained to both Houses, no further explanations were made on behalf of the newly-appointed ministers. The bare fact was stated to the Commons, but nothing seems to have been said about it in the Lords. *Ibid.* p. 1575.

[h] *Ibid.* vol. lxxvii. p. 77.

[i] *Ibid.* vol. cxxxvi. pp. 941, 960.

[j] See *ante*, vol. i. p. 149.

On the foregoing occasion, Lord Derby observed that he thought it was 'the duty of every public man, whether he accepts or whether he abstains from accepting office, to be prepared to give at the proper time a full explanation, both to his own friends and to the country, of the motives which may have induced him so to accept or abstain.' Such explanations, however, 'should never be given until a government is actually formed, and the state of affairs is decided.'[k]

After what has been already stated, it will be obvious, that upon the resignation of a ministry, or of any prominent minister, explanations should be given of the causes thereof, when the fact is announced to Parliament;[l] provided that the permission of the sovereign to disclose the same has been first obtained.[m] But when a single member of a cabinet retires, until he has made his own statement in the House to which he belongs, the government cannot explain the grounds of his withdrawal to the other House.[n]

Rule concerning explanations.

All ministerial explanations in the House of Commons are subject to the rule which provides that 'by the indulgence of the House, a member may explain matters of a personal nature, although there be no question before the House; but such matters may not be debated.'[o] Any debate, therefore, following upon a ministerial explanation, would be irregular; and no speech at such an occasion should be concluded by a formal motion, with a view to bring on a general debate.[p]

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[k] Hans. Deb. vol. cxxxvi. p. 1259. This rule has not been held to apply to the subordinate office of a junior Lord of the Treasury. Upon the resignation of one of these functionaries, in 1861, the Premier (Lord Palmerston) declined to state the reason for his retirement. *Ibid.* vol. clxiv. p. 197.

[l] *Ibid.* vol. cxxiii. p. 1698; vol. clxxxv. pp. 1312, 1323.

[m] See *ante*, p. 56.

[n] Hans. Deb. vol. cxxxvi. pp. 939, 943, 960; and see *ante*, vol. i. p. 149, *n*, a delay in announcing the resignation of a whole ministry to the Commons, because the Premier, by whom the formal statement should first be made, was a peer, and the Lords had adjourned over the day.

[o] Rules, Orders, &c., No. 155.

[p] The Speaker, and Mr. Disraeli. Hans. Deb. vol. clxxiv. pp. 1215, 1216. But upon May 4, 1868, on a formal motion to adjourn, a debate took place after a ministerial statement by

On May 5, 1868, however, Mr. Gladstone, on a formal motion for the adjournment of the House, asked Mr. Disraeli (the Premier), to explain an apparent discrepancy between a statement he had made to the House on the day previous, and one addressed to the House of Lords on the same subject by another minister. In reply, Mr. Disraeli gave a clearer statement of his intended meaning, which led to some debate and further explanations from Mr. Disraeli, when the matter dropped.[q]

In the House of Lords, the practice on such occasions is less strict.[r]

Ministerial negotiations.

During the progress of ministerial negotiations, it is, as a general rule, inexpedient and objectionable to make enquiries in Parliament as to whether particular individuals have been charged to form a ministry—or invited to form part of a ministry—and upon what conditions. Such questions are inconvenient, as tending to the premature disclosure of confidential matters.[s] But when difficulties and delays have arisen in the formation of a ministry, and it is in contemplation to address the crown on the subject, it is not unprecedented to permit enquiries of this kind, 'as tending to explain the conduct and clear the characters of public men.' It is, nevertheless, optional with those to whom such questions are put, whether they will answer them or not.[t]

We have already pointed out the reasons which would justify a sovereign in dismissing his ministers:[u] likewise the circumstances that would naturally lead to the resignation or reconstruction of a ministry.[v] It now remains to explain the nature and extent of the control over the ministers of the crown which is constitutionally exercised by the House of Commons.

As it is essential that the ministers of the crown should possess the confidence of the popular chamber, so the

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Mr. Disraeli. *Ibid.* vol. cxci. pp. 1694–1717.

[q] *Ibid.* pp. 1787–1819.

[r] See *ante*, vol. i. p. 160; Hans. Deb. vol. cxci. p. 1687.

[s] Lord Brougham. Mirror of Parl. 1834, p. 2715.

[t] See Parl. Deb. vol. xxiii. pp. 313–316. Mirror of Parl. May 11, 1832, p. 2001.

[u] *Ante*, vol. i. pp. 67, 211.

[v] *Ante*, pp. 199, 219.

loss of that confidence will necessitate their retirement from office. The withdrawal of the confidence of the House of Commons from a ministry may be shown either (1) by a direct vote of want of confidence, or of censure for certain specified acts or omissions; or (2) by the rejection of some legislative measure proposed by ministers, the acceptance of which by Parliament they have declared to be of vital importance; or, on the other hand, by the determination of Parliament to enact a particular law contrary to the advice and consent of the administration.

Vote of want of confidence.

The direct vote of want of confidence, as a procedure for the removal of an obnoxious or an incapable ministry, is of comparatively recent origin:[w] and for its present accepted form, whereby the House declares that it has no confidence in an administration, without assigning their reasons for such declaration,[x] no precedent exists anterior to 1841.

The assault upon Sir Robert Walpole, which was made simultaneously in both Houses of Parliament, on February 13, 1741, and which, though unsuccessful at the time, was the proximate cause of his downfall, was substantially intended as a vote of want of confidence. The motion was for an address to the king, praying him to remove Sir Robert Walpole, the then chief minister, 'from his presence and counsels for ever,' without alleging any particular offence he had committed. For this omission, Sir Robert declared the motion to be 'one of the greatest encroachments that was ever made upon the prerogative of the crown.' The motion was negatived by a large majority, but a few months afterwards a general election took place, and defeats in the new House of Commons speedily compelled Sir Robert Walpole to resign his office.[y]

In 1779, a proposed amendment to the Address in the House of

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[w] Something very like a vote of want of confidence was introduced in Grand Committee, on November 23, 1692, but it was not followed up, and 'came to nothing.' (Parl. Hist. vol. v. pp. 733, 770.) See Lord John Russell's animadversions upon the hesitancy of Pitt to propose a vote of want of confidence in the Addington ministry, in 1803-4, lest it should be deemed an encroachment upon the royal prerogative, notwithstanding his conviction of the weakness and incompetence of ministers. Life of Fox, vol. iii. p. 310.

[x] For a vindication of the propriety of this method, see Massey, Hist. of Eng. vol. iii. p. 235.

[y] Parl. Hist. vol. xi. pp. 1047-1388. Mahon, Hist. of Eng. vol. iii. pp. 101-113, 153.

Lords, setting forth the necessity for 'new councils and new counsellors,' was characterised by Lord Chancellor Thurlow as 'an outrage on the constitution,' on the ground that it was an attempt to condemn ministers 'by a side-wind, without notice, and without evidence.' Lord Camden very properly rebuked the Chancellor for this speech; but the amendment was negatived.[z]

In 1782, after repeated attempts in the House of Commons to overthrow Lord North's administration, a direct vote of want of confidence was moved. It was embodied in a long resolution, enumerating causes of dissatisfaction connected with the loss of the American Colonies, and the continuance of the war, for which the House 'can have no further confidence' in the existing ministry. This motion was negatived by a majority of nine only, in a full House. Whereupon notice was given, that it would be followed by another, to the same effect, unless the Government retired. But on the day appointed for the intended motion, Lord North announced his resignation. This was the first example of a change of ministry as the immediate result of a vote of the House of Commons.[a]

When the great attack was made upon the newly appointed ministry of Mr. Pitt, in 1784, several resolutions, partaking more or less of the nature of votes of want of confidence, were passed by the House of Commons. But the minister gallantly struggled on against a powerful majority until the time was ripe for an appeal to the country, when he obtained a reversal of the verdict against him by a dissolution of Parliament. The adverse motions against Mr. Pitt embodied, in every instance, reasons of complaint, although Mr. Fox, who then led the Opposition, declared that 'it had always been his opinion that the House could advise the removal of ministers without giving their reasons.'[b]

Thenceforward, we find repeated instances, in both Houses of Parliament, of motions to express a want of confidence in the ministry, none of which were successful—all of them, however, setting forth, with more or less detail, the grounds of objection and the causes of complaint[c]—until we come to the memorable case of 1841.

On May 27, 1841, after Lord Melbourne's ministry had sustained numerous defeats in both Houses of Parliament, and particularly a defeat in the House of Commons upon the important question of

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[z] Parl. Hist. vol. xx. pp. 1087, 1092.

[a] *Ibid.* vol. xxii. pp. 1170, 1214; *ante*, vol. i. p. 73.

[b] Parl. Hist. vol. xxiv. pp. 239–733, and especially p. 697.

[c] For example, in 1797, in both Houses, see Adolphus, Hist. of Eng. vol. vi. pp. 591–594. In the Lords:—March 22, 1798, Parl. Hist. vol. xxxiii. p. 1317; June 2, 1803, *ibid.* vol. xxxvi. p. 1571. In the Commons:—December 4, 1800, *ibid.* vol. xxxv. p. 710; June 3, 1803, *ibid.* vol. xxxvi. p. 1535.

the Sugar duties, and had declared their intention of proceeding with the public business, Sir Robert Peel moved to resolve that 'Her Majesty's ministers do not sufficiently possess the confidence of the House of Commons to enable them to carry through the House measures which they deem of essential importance to the public welfare; and that their continuance in office under such circumstances is at variance with the spirit of the constitution.' After a protracted debate, this motion was agreed to by a majority of one. Whereupon, as soon as the necessary business could be completed, a dissolution of Parliament took place. Upon the meeting of the new Parliament, amendments were agreed to, in both Houses, to the Address, to substitute three paragraphs in lieu of others in the Address which had been moved on behalf of ministers. 'The corner-stone of the amendment' was to declare that it was 'essential' that 'the government should possess the confidence of this House and of the country, and respectfully to represent to her Majesty that that confidence is not reposed in the present advisers of her Majesty.' Exception was taken to this motion, by Lord John Russell, that in announcing its opinion in regard to the ministers of the crown, the House 'is bound to state the reason of its proceeding,' and that 'motions of this description have always been founded on facts evidently sufficient to justify the intervention of the House.'[d] Nevertheless, the adverse amendments being carried in both Houses, by large majorities, the Queen responded with an assurance that she would take 'immediate measures for the formation of a new administration.'[e]

Modern form of such votes

Again, on June 7, 1859,—upon the meeting of a new Parliament after a dissolution to take the sense of the country in regard to Earl Derby's administration, which had been defeated in the House of Commons on the question of Reform,—an amendment was proposed to the Address in answer to the Speech, in the House of Commons, to add certain words to submit to her Majesty that it is essential that her Majesty's government should possess the confidence of this House and of the country; and respectfully to represent that such confidence is not reposed in the present advisers of her Majesty. This amendment being agreed to, the ministry resigned office.[f]

The House of Commons is constitutionally competent to express, at any time, either its partial disapprobation of a ministry, or its general want of confidence in the

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[d] Mirror of Parl. 2nd. Sess. 1841, pp. 212, 213.

[e] For a more detailed narrative of this case, see *ante*, vol. i. pp. 131–139.

[f] See *ante*, vol. i. pp. 154–158.

When a vote of want of confidence is appropriate.

policy and proceedings of the administration. The latter, however, is a right which should be sparingly exercised, and reserved for great occasions. A vote of want of confidence, though justifiable under certain circumstances, is open to serious objection if it be hastily or unreasonably entertained for mere party purposes.[g] Moreover, no person has a right to bring forward a resolution of want of confidence, or a vote of censure, in respect to any ministry, unless he is prepared to assume the consequences of such a proceeding, and the responsibility of placing the government in a minority. Those consequences would naturally be either a dissolution of Parliament, or that the sovereign would call upon the promoters of the successful attack to assist in the formation of a new ministry.[h]

Votes of censure.

A vote of censure upon a particular act or policy of the administration—like a vote of want of confidence—is a matter of vital concern. When passed by the House of Lords, such a vote, though not necessarily fatal, is, as we have seen, of very great importance, and can only be counterbalanced by the distinct approval of the same policy by the other House.[i] The formal censure of a ministry, for any act or omission in the exercise of their administrative functions, by the House of Commons, will ordinarily lead to their retirement from office, or to a dissolution of Parliament,[j] unless the act complained of be disavowed, when the retirement of the minister who was especially responsible for it will propitiate the House, and satisfy its sense of justice.[k]

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[g] Mr. Disraeli, Hans. Deb. vol. cxxxv. p. 226. Sir G. C. Lewis (Chanc. of Exch.), *ibid.* vol. cxxxviii. p. 2129. Hearn, Govt. of Eng. p. 219. Stanhope, Life of Pitt, vol. i. p. 190. And see *ante*, vol. i. p. 212.

[h] Upon this principle the leaders of the Conservative party united with the government in opposing a hostile motion submitted to the House of Commons on June 3, 1862, and which the Premier (Lord Palmerston) declared that he should regard as equivalent to a vote of want of confidence. Hans. Deb. vol. clxvii. pp. 349, 386. See also *ibid.* vol. cxci. p. 1902; vol. cxcii. pp. 648, 797, 1035.

[i] See *ante*, vol. i. p. 28; Hearn, Govt. of Eng. p. 160.

[j] *Ante*, vol. i. p. 133.

[k] See *ibid.* pp. 267, 426; *ante*, p. 382.

Thus: the Coalition ministry resigned, in 1782, on account of a vote of censure by the House of Commons upon the terms of peace with America;[l] the Aberdeen ministry resigned, in 1855, because of the appointment by the House of Commons of a select committee to enquire into the state of the army before Sebastopol, which was regarded by the government as condemnatory of their conduct of the war;[m] the Palmerston ministry appealed to the country, in 1857, against a vote of censure by the House of Commons, in relation to certain proceedings in China.[n] Being sustained upon this occasion by the new Parliament, the ministry were again subjected to a vote of censure, in 1858, in consequence of an objectionable correspondence with the French government in regard to the law for the punishment of conspiracy to murder.[o]

On the other hand, Sir Robert Peel persevered in retaining office, in 1835, notwithstanding a vote of censure which was carried against ministers in the House of Commons, by the insertion of a paragraph in the Address in answer to the Speech at the opening of Parliament, condemning the 'unnecessary dissolution' of the preceding Parliament. But Sir R. Peel justified this course upon the ground that no minister who is obstructed by a powerful Opposition, upon the first formation of his government, is bound to resign after his first defeat; and that inasmuch as the constitution has conferred upon the sovereign the sole right of nominating his ministers, they were entitled to a fair trial, and should be judged of by their policy and conduct in office.[p]

Defeat of ministers in Parliament.

Want of confidence in an administration is not necessarily expressed only by a vote of censure, or by a distinct resolution to that effect; it may be unequivocally declared in other ways, as by the refusal of the House to follow the lead of ministers upon any particular occasion. In such cases, however, it must rest with the ministry to determine upon what policy or proceeding they will take their stand; and what extent of deviation from the course they have advised Parliament to pursue will be regarded as a withdrawal of the confidence heretofore reposed in them by the House. It is in the power of ministers to treat any motion that may be made in the House, even a motion of adjournment, in this way;[q] and

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[l] *Ante*, vol. i. p. 75.
[m] *Ibid.* p. 149.
[n] *Ibid.* p. 151.
[o] *Ibid.* p. 152.
[p] *Ibid.* pp. 126, 135, 212.
[q] Sir Hugh Cairns, Hans. Deb. vol. clxxxii. p. 1489; and see p. 1856.

they will sometimes meet a motion on a question of public policy, which was not intended to be a censure on the government, with a declaration that if agreed to by the House, they will consider it as equivalent to a vote of want of confidence.[r]

Votes of confidence.

As a general principle, the confidence of the House of Commons in the ministers of the crown should not be asserted by any abstract resolution, but should rather be inferred from the support given by the House to the executive government, and by its mode of dealing with the measures proposed for its consideration by the ministry. There are undoubtedly occasions which would justify a government in asking for an express declaration of confidence from the House of Commons, either in reference to their general policy, or to some particular feature of it; but such occasions are very rare.[s] A direct vote of confidence may suitably be agreed to by the House of Commons, when the policy or conduct of ministers has been assailed elsewhere, in a manner calculated, unless neutralised by the action of the Commons, to impair their just authority and influence, or to lead to their resignation of office.[t]

On May 3, 1867, a motion was made in the House of Commons, 'That her Majesty's Government, in refusing the use of Hyde Park for the purpose of holding a political meeting, have asserted the legal right of the crown, and deserve the support of this House in so doing.' Mr. Gladstone, while admitting the duty of the House to respect and support the authority of the crown and of the ministers in the administration of the law, considered it to be beyond the duty of the House to assume responsibility for any step the executive government might take in the exercise of their legal powers, so as to affirm or question the correctness of their judgment. He, therefore, advised that the motion should be withdrawn; a request which the mover, after a short debate, complied with.[u]

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[r] See *ante*, vol. i. p. 479.

[s] Sir R. Peel. Mirror of Parl. 1839, pp. 1721, 1731.

[t] Hearn, Govt. of Eng. pp. 145–148; *ante*, vol. i. pp. 28, 120.

[u] Hans. Deb. vol. clxxxvi. pp. 1966, 1973, 1987.

Ministerial defeats on Bills.

We have next to enquire, how far the inability of ministers of the crown to control the course of legislation on public questions should be taken as an indication that they had lost the confidence of the House of Commons.

It has been already shown that whereas, by modern constitutional practice, ministers are required to initiate Bills upon all questions affecting the public welfare—it being in the power of private members likewise to introduce similar measures—it is customary and expedient that considerable latitude should be granted to the legislative chambers in amending or rejecting the ministerial measures, without it being assumed by any such proceeding that they have withdrawn their confidence in the advisers of the crown.[v]

In proof of this position, precedents have been adduced, in the preceding pages, of important public measures brought in by ministers, which were rejected by Parliament,[w] or so amended as to lead to their abandonment.[x] Also, of Bills of a constitutional character introduced by private members, and carried through one House, notwithstanding the opposition of ministers.[y] But we find no example of any Bill being permitted to pass through both Houses to which ministers were persistently opposed.[z] Where the opinion of Parliament has been unequivocally expressed in favour of a particular Bill, regardless of objections thereto expressed by ministers, it has been the invariable practice for ministers either to relinquish their opposition, in deference to that opinion, and to lend their aid to carry the measure, with such amendments as might be necessary to conform it to their own ideas of public policy,[a] or else to resign.[b] Every successive administration,

[v] See *ante*, pp. 300–315.

[w] See *ante*, vol. i. pp. 132, 133, 523.

[x] *Ante*, p. 302. Case of the Irish Church Appropriation question, May, Const. Hist. vol. ii. p. 486; and see Earl Russell's comments on this case, Hans. Deb. vol. cxci. p. 1441.

[y] *Ante*, pp. 302, 310.

[z] See *ante*, pp. 305, 318.

[a] See *ante*, pp. 303, 311.

[b] Resignation of the Russell ministry in 1851, on a franchise Bill, and in 1852, on a militia Bill being carried against them; *ante*, vol. i. p. 145.

under parliamentary government, has thus been enabled to maintain—with more or less adherence to their party principles, or to their political programme—the constitutional control over the proceedings of Parliament in matters of legislation which appertains to their office: a control which the majority ordinarily possessed by ministers of the crown in the legislative chambers enables them to exercise without infringing upon the independence of Parliament.

If, however, a Bill is introduced, or an amendment carried, in either House, to which ministers are unable to agree, and they are unwilling to permit it to pass that House upon the chance of its being rejected by the other, a ministerial crisis must ensue; and ministers will either request the House to re-consider its vote, unless they are prepared to take the consequences of defeating the ministry upon a vital question,[c] or they will at once appeal to the country, or retire from office.[d]

A mere defeat, or even repeated defeats, in the House of Commons, upon isolated questions, would not necessarily require the resignation of a ministry which retains the general confidence of Parliament.[e] But if ministers declare that they regard the passing of a particular measure, in a certain shape, as a matter of vital importance, the rejection of their advice by Parliament is tantamount to a vote of want of confidence, and must occasion their resignation.[f] For if the ministers of the crown 'do not sufficiently possess the confidence of the House of Commons to enable them to carry through the

[c] See *ante*, vol. i. p. 140; Lord John Russell, Hans. Deb. vol. cxvi. pp. 632–634: and see *ibid.* vol. cli. pp. 551–563; vol. cxcii. pp. 485–494, 622, 841.

[d] See *ante*, vol. i. p. 145.

[e] See *ante*, vol. i. (defeats of Sir R. Peel's ministry) pp. 125–127; (defeats of the Melbourne ministry) 130 note[e], 132; (defeats of the Aberdeen ministry), Hans. Deb. vol. cxxxiii. p. 1075; *ibid.* vol. cxxxv. p. 227; (defeats of the Derby ministry) *ante*, vol. i. p. 155; and upon the general doctrine, see Grey, Parl. Govt. Ed. 1864, p. 113; Edin. Rev. vol. xcv. p. 228; Hearn, Govt. of Eng. pp. 221–233, and *ante*, vol. i. p. 132.

[f] See *ante*, vol. i. pp. 128, 143, 152, 160.

House measures which they deem of essential importance to the public welfare, their continuance in office under such circumstances is at variance with the spirit of the constitution.'[g]

Defeats on financial questions.

Furthermore, while, as we have already noticed, questions of finance and taxation are especially within the province of the House of Commons to determine, and they should be free to act in relation to such questions without being hampered with the possible effect of their votes upon the stability of the ministry,[h] yet, as regards the estimates, it is otherwise. When ministers assume the responsibility of stating that certain expenditure is necessary for the support of the civil government, and the maintenance of the public credit, at home and abroad, it is evident that none can effectually challenge the proposed expenditure, to any material extent, unless they are prepared to take the responsibility of overthrowing the ministry. 'No government could be worthy of its place if it permitted its estimates to be seriously resisted by the Opposition; and important changes can be made therein only under circumstances which permit of the raising of the question of a change of government.'[i]

Resignation or dissolution?

After the defeat of ministers upon a vital question, in the House of Commons, there is but one alternative to their immediate resignation of office, namely, a dissolution of Parliament, and an appeal to the constituent body.[j] This alternative, however, is not constitutionally available whenever a majority of the House of Commons has condemned a ministry; it should only be resorted to under certain circumstances, to be presently explained.[k]

While the decision of the House upon any question

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[g] Resol. House of Commons, June 4, 1841 (*ante*, vol. i. p. 131). See also, Mr. Disraeli and Lord John Russell's observations. Hans. Deb. vol. ci. pp. 704–707, 710.

[h] See *ante*, vol. i. p. 517.

[i] Mr. Gladstone. Hans. Deb. vol. cxci. p. 1747.

[j] See Russell's Life of Fox, vol. ii. pp. 54, 95; Gladstone, Hans. Deb. vol. cxcii. p. 1606.

[k] See *post*, p. 405; Toulmin Smith, Parl. Rememb. 1859, p. 74: Edin. Rev. vol. cxxviii. p. 575.

Threats of a dissolution.

which is calculated to affect the relations of ministers towards the House of Commons is pending, it is highly irregular and unconstitutional to refer to a dissolution of Parliament as a probable contingency, with a view to influence the conduct of members upon the particular occasion. For the Houses of Parliament should always be in a position to exercise an unbiassed judgment upon every question brought before them, fearing neither the crown on the one hand nor the people on the other.[1]

When a dissolution should take place.

But after an appeal to the country has been determined upon, the dissolution should take place with the least possible delay; that is to say, as soon as the necessary business before Parliament has been disposed of; the Opposition meanwhile aiding the ministry in completing the same, and refraining from any further attempt to embarrass them.[m]

By necessary business is to be understood such measures as are imperatively required for the public service, or as may be proceeded upon by common consent. 'It is inconsistent with all usage, and with the spirit of the constitution, that a government should be enabled to select the measures which it thinks proper to submit to the consideration of a condemned Parliament,' or, 'to exercise its own discretion, for party purposes, as to what measures it will bring forward or what it will withhold.'[n] Upon the same principle, it is customary, when Parliament is about to be dissolved upon the occurrence of a ministerial crisis, to restrict the grant of supplies to an amount sufficient to defray the indispensable requirements of the public service, until the new Parliament can be assembled.[o] In 1868, however, this wholesome constitutional rule was departed from, by common consent, for reasons of public convenience.[p]

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[1] See Hans. Deb. vol. ix. pp. 346–348, 435, 449, 588; Romilly's Life, vol. ii. p. 194; Mirror of Parl. 1841, p. 2113; Hans. Deb. vol. cl. pp. 1076, 1085; vol. cliii. p. 1256; and *ante*, vol. i. p. 146.

[m] See *ante*, vol. i. pp. 136, 146.

[n] Sir R. Peel, Mirror of Parl. 1841, pp. 2136, 2137; and see *post*, p. 410.

[o] See *ante*, vol. i. p. 486.

[p] Hans. Deb. vol. cxcii. pp. 1126, 1223, 1602.

When it may be advised.

And here it may be suitable to notice the particular occasions upon which, by constitutional usage, a minister is justified in advising the crown to exercise its prerogative of dissolving Parliament.

Firstly, a dissolution may properly take place in order to take the sense of the country in regard to the dismissal of ministers by the sovereign, as in 1784,[r] in 1807,[s] and in 1834.[t]

Secondly, on account of the existence of disputes between the two Houses of Parliament, which have rendered it impossible for them to work together in harmony.[u] But happily there have been no cases of this kind since the complete establishment of parliamentary government.

Thirdly, for the purpose of ascertaining the sentiments of the constituent body in relation to some important act of the executive government;[v] or some question of public policy upon which the ministers of the crown and the House of Commons are at issue.[w]

Fourthly, whenever there is reason to believe that the House of Commons does not correctly represent the opinions and wishes of the nation. Upon this ground, ever since 1784,[x] 'it has been completely established, as

[r] See *ante*, vol. i. p. 77.

[s] See *ante*, vol. i. p. 93.

[t] *Ibid.* p. 124.

[u] Hans. Deb. vol. lxxxiii. p. 34. As in 1679, because of the refusal of the House of Lords to proceed with the impeachment of Lord Treasurer Danby (Parry's Parls. p. 590); in 1701, because of dissensions on account of the impeachment of Somers and other ministers; and in 1705, on account of disputes in the case of the 'Aylesbury men.' Burnet's Own Time, A.D. 1701, 1705; State Trials, vol. xiv. p. 695.

[v] As in 1806, after the failure of the negotiations for peace with France, and to strengthen the hands of government in the continued prosecution of the war. Parl. Deb. vol. viii. p. 27; but see Mirror of Parl. 1835, p. 64.

[w] As in 1831 (see *ante*, vol. i. p. 119); in 1852 (*ibid.* p. 146); in 1857 (*ibid.* p. 151); in 1859 (*ibid.* p. 154); and in 1868 upon the Irish Church question. Upon this occasion Mr. Disraeli claimed a right to dissolve upon other grounds, the propriety of which were disputed by Mr. Gladstone. But upon the question at issue between ministers and the House of Commons, Mr. Gladstone admitted that a dissolution would be justifiable, provided that there was a rational prospect of the adverse vote of the House being reversed by the country. As Mr. Disraeli entertained a strong conviction that the country would support him, he had clearly a right to make the appeal. See *post*, p. 410.

[x] See Russell, Memorials of Fox, vol. ii. p. 245.

the rule of the constitution, that when the House of Commons refuses its confidence to the ministers of the crown, the question whether, in doing so, it has correctly expressed the opinion of the country, may properly be tested by a dissolution; and that the House of Commons cannot attempt to resist this exercise of the prerogative, by withholding the grants of money necessary for carrying on the public service till a new Parliament can be assembled, without incurring the reproach of faction.'[y]

When it is objectionable.

The prerogative of dissolution, however, should be exercised with much forbearance. Frequent or abrupt dissolutions of Parliament 'blunt the edge of a great instrument given to the crown for its protection,' and whenever they have occurred, have always proved injurious to the State.[z]

It is not a legitimate use of this prerogative, to resort to it when no grave political question is directly at issue between the contending parties, and merely in order to maintain in power the particular ministers who hold the reins of government.[a] The dissolution in 1834 has been impeached on this ground. It was avowedly done for the purpose of strengthening the newly appointed ministers in the House of Commons, and without reference to any great question of state policy. Though Sir Robert Peel's arguments in defence of it were very plausible,[b] the result was unfavourable to his administration, and the dissolution itself was condemned by the House of Commons. The king was obliged to recall the ministers whom he had previously dismissed, and it is

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[y] Grey, Parl. Govt. new ed. p. 79.

[z] Peel, Memoirs, vol. ii. pp. 44, 294.

[a] Sir R. Peel, Hans. Deb. vol. lxxxvii. p. 1042; Sir R. Peel and Lord John Russell, *ibid.* vol. cxix. p. 1070; *ibid.* vol. cl. p. 1076, and Peel's Memoirs, vol. ii. p. 295. Upon this principle Lord John Russell refrained from advising a dissolution when his administration was defeated in the House of Commons, in 1852; and for the same reason he declared that the dissolution upon the defeat of Lord Palmerston's government in 1857 was not justifiable. Hans. Deb. vol. cl. pp. 1076, 1077.

[b] Peel's Memoirs, vol. ii. pp. 43–48.

now generally admitted that this dissolution was ill-advised, and therefore an objectionable precedent.[c]

Moreover, no minister of the crown should advise a dissolution of Parliament unless he has a reasonable prospect of securing thereby a majority of members in the new House of Commons, who will 'honestly and cordially concur with him in great political principles;' in other words, unless he entertains 'a moral conviction' that a dissolution will procure him a Parliament 'with a decided working majority of supporters.'[d]

Nor is there any constitutional principle which requires that there should be an appeal to the country previous to legislation upon great public questions, even though they may involve organic changes in the constitution itself; for, by the true theory of representation, asserted by the highest authorities and enforced by the uniform practice of Parliament, the actual House of Commons is competent to decide upon any measure that may be necessary for the well-being of the nation.[e]

Nevertheless, after the passing of the Reform Act of 1867, whereby the area of representation was considerably enlarged, it was objected, with great force, that no legislation involving new and important principles ought to be undertaken by the existing Parliament. Under such circumstances, to permit a Parliament

[c] May, Const. Hist. vol. i. pp. 126, 127. Edin. Rev. vol. cxv. p. 236.

[d] Peel, Memoirs, vol. ii. pp. 294, 297; see also Grey, Parl. Govt. new ed. p. 80; Hearn, Govt. of Eng. p. 156. Upon this ground, Sir R. Peel afterwards declared his belief that the dissolution by the Whigs, in 1841, was unjustifiable; and for the same reason he refused to advise a dissolution upon his own defeat, in 1846. See *ante*, vol. i. p. 143.

[e] For example, the Septennial Bill of 1716 (see Hallam, Const. Hist. vol. iii. p. 316; Mahon, Hist. of Eng. vol. i. p. 301); the Unions between England and Scotland, and between Great Britain and Ireland (Parl. Hist. vol. xxxv. p. 857); and the repeal of the Corn laws, in 1846, by a Parliament elected in the interest of their maintenance, were severally enacted without an intermediate dissolution, and the arguments of those who, upon these occasions, urged the necessity for a dissolution, were declared to be 'ultra democratic,' 'dangerous,' and 'unprecedented,' by Whig and Tory statesmen alike. Hans. Deb. vol. lxxxiii. p. 33; vol. lxxxiv. p. 464; vol. lxxxv. pp. 224–226; *ibid.* vol. cxci. p. 930. See also the observations of the Earl of Carnarvon, and of Lord Monck, on the British North America Bill, in 1867. *Ibid.* vol. clxxxv. pp. 572, 580; and Nova Scotia Assembly Journals, 1866, Appx. No. 10, p 12.

elected by the old, extinct, and uprooted constituency, to go on making laws, dealing with taxation, and the government of the country, would, it was urged, be quite inconsistent with sound constitutional principle.[f]

Duty of the sovereign in respect to a dissolution.

A valuable security against the improper exercise of this prerogative is that, before a dissolution can take place, it must be clearly approved of by the sovereign, after all the circumstances shall have been explained to him, and he shall have duly considered them.[g] Upon such an occasion, 'the sovereign ought by no means to be a passive instrument in the hands of his ministers; it is not merely his right, but his duty, to exercise his judgment in the advice they may tender to him. And though by refusing to act upon that advice he incurs a serious responsibility, if they should in the end prove to be supported by public opinion, there is perhaps no case in which this responsibility may be more safely and more usefully incurred than when the ministers ask to be allowed to appeal to the people from a decision pronounced against them by the House of Commons.' For they might prefer this request when there 'was no probability of the vote of the House being reversed by the nation, and when the measure would be injurious to the public interests. In such cases the sovereign ought clearly to refuse to allow a dissolution.'[h]

In the Session of 1868, the newly appointed ministry of Mr. Disraeli—after sustaining a minor defeat upon a government Bill to transfer certain fines and fees in Ireland to the Consolidated Fund[i]—were defeated, on April 3 and 30, upon a vital question raised by Mr. Gladstone in regard to the disestablishment of the Irish Church. On the ground that this vote had 'altered the relations between her Majesty's government and the present House of Commons,' and required that ministers should consider their position, Mr. Disraeli obtained an adjournment of the House from Thursday to Monday.[j] On Monday (May 4) both Houses were informed that ministers had

[f] Sir Hugh Cairns, Hans. Deb. vol. clxxxii. p. 1482; Mr. Disraeli, *ibid.* vol. cxc. p. 1787; vol. cxci. p. 897; Lord Stanley, *ibid.* p. 501.

[g] Wellington, in Peel's Memoirs, vol. ii. p. 300.

[h] Grey, Parl. Govt. new ed. p. 80.

[i] Hans. Deb. vol. cxc. pp. 1227–1234.

[j] *Ibid.* vol. cxci. p. 1679.

advised the Queen to dissolve Parliament, 'and take the opinion of the country as to the conduct of her ministers, and the question of the Irish Church;' but had also stated, 'that if her Majesty were of opinion that the question at issue could be more satisfactorily settled, or the just interests of the country more studied, by the immediate retirement' of ministers, they would resign at once. 'Her Majesty was pleased to express her pleasure not to accept the resignation of her ministry, and her readiness to dissolve this Parliament as soon as the state of public business would permit.' Whereupon Mr. Disraeli 'advised her Majesty that, although the present constituency was no doubt as morally competent to decide upon the question of the disestablishment of the Church as the representatives of the constituency in this House, still it was the opinion of ministers that every effort should be made with a view that the appeal, if possible, should be directed to the new constituency which the wisdom of Parliament created last year;' adding, that if ministers had the cordial co-operation of Parliament, the dissolution might take place in the autumn.[k] Dissolution of Parliament in 1868.

In the House of Lords, Earl Grey denied the right of ministers, on being defeated in the Commons, to ask the crown for a dissolution of Parliament, unless there was strong reason to believe that the House of Commons had misrepresented the feeling of the country. In reply, it was contended by Lord Chancellor Cairns that the present Parliament, having been elected under a prime minister whose opinions in regard to the Irish Church were known to have been adverse to those recently expressed by a majority of the House of Commons, the vote of the House on that question presented exactly one of those occasions on which ministers might fairly advise a dissolution.[l]

In the House of Commons, Mr. Disraeli asserted that 'practically it had been held to be the constitutional right of a minister, upon taking office, to advise the crown to dissolve a Parliament elected under the influence of his political opponents;' that the Earl of Derby had waived that right upon his appointment, in 1866, because 'the Parliament itself was then but recently elected, and there were other reasons of gravity and principle which induced him to hope that he might be able to carry on affairs with the present Parliament.' At the close of 1867, Earl Derby, having succeeded in passing the Reform Act, might have claimed the right 'to take the opinion of the country upon the conduct of ministers in carrying this measure.' But he was deterred from doing so because there were certain supplementary measures connected with the settlement of the Reform question which still remained to be enacted. In the

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[k] Hans. Deb. pp. 1686, 1705, 1794. [l] *Ibid.* pp. 1687–1689.

present session, Lord Derby resigned, and was replaced in the premiership by Mr. Disraeli, the policy of ministers continuing unchanged. Under these circumstances, Mr. Disraeli claimed that the original right to advise a dissolution of Parliament had devolved upon him. He added, that the approval generally accorded to the administration of public affairs by the new ministry was such, that they felt free to appeal to the country, and had no fear of the result. He had accordingly advised a dissolution upon the question whether or not the Church in Ireland should be disestablished, having 'a profound conviction that the opinion of the nation does not agree on this subject with the vote of the House of Commons.' [m]

In reply, Mr. Gladstone denied the right of a ministry to 'inflict' a 'penal' dissolution upon the country, for no other cause than its 'sitting in a Parliament that was called into existence before the ministry itself.' He argued that there were two conditions necessary to justify an appeal to the country by a government whose existence is menaced by an adverse vote in the Commons. 'The first of them is, that there should be an adequate cause of public policy; and the second of them is, that there should be a rational prospect of a reversal of the vote of the House.' He denied the propriety of a dissolution merely to determine the question whether an administration should continue in office. Admitting the right to dissolve where it was doubtful whether the country would ratify the vote of the House, he contended that the large majorities (of 60 and 65) against ministers on the Irish Church question were 'a sufficient evidence of the judgment of the country.' [n]

Mr. Gladstone, moreover, protested against a postponement of the dissolution—which, according to precedent, should be immediate—to 'the autumn;' ministers meanwhile proposing to submit to the House questions of great constitutional importance. He also declared his intention of following up his resolutions upon the Irish Church with a Bill to suspend appointments therein until after the meeting of the new Parliament. [o]

Other leading members took part in the debate, and vehemently opposed the contemplated delay in the dissolution of Parliament, and the continuance of ministers in office for eight or nine months, until a new Parliament could pass judgment upon them.

Mr. Disraeli, in reply, stated that ministers were willing to abstain from all unavoidable legislation, and to limit themselves to passing the Scotch and Irish Reform Bills, and the Boundary Bills, which would permit of a dissolution in November, with an appeal to 'the

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[m] Hans. Deb. vol. cxci. pp. 1695–1702.

[n] *Ibid.* pp. 1708–1713.

[o] *Ibid.* pp. 1714–1717. For the proceedings upon this Bill, see *ante*, p. 310.

new constituencies.' But he repudiated the notion that the adverse vote on the Irish Church question—which he believed to have been a conscientious vote on a subject of great importance—was to be regarded as meant 'in any way whatever to imply a general want of confidence in the government.' On such a matter there ought to be no mistake or misunderstanding. 'If you wish to pass a vote of want of confidence, propose one. Let the case be fairly argued, let the House give a deliberate opinion, and let the country judge.' If the Opposition objected to the course proposed by ministers, it would be their duty to propose a vote of this description, which, if carried, would lead to an immediate dissolution. The reason why an immediate dissolution had not been already determined upon was, as everyone knew, because ministers were 'placed, in reference to that point, in circumstances of a peculiar and unprecedented character,' wherein they would 'endeavour to arrive at some understanding with the House which, while it would facilitate the progress of public business, would be of the greatest advantage to the country.'[p] But upon this, as upon later occasions, the House showed an evident disinclination to favour the introduction of a vote of want of confidence, and no attempt was made, in either House, during the remainder of the session, to force the ministers out of office by such a method.[q]

Meanwhile, the Scotch and Irish Reform Bills, and the Boundary Bills, were proceeded upon, and ministers were obliged to permit very extensive and important amendments to be made in these measures. Upon one occasion, however, they stood firm, and refused to be responsible for certain amendments which had been carried against them in committee on the Scotch Reform Bill. A compromise was afterwards agreed upon, and the Bill allowed to proceed.[r]

On May 29, Mr. Disraeli repeated that the government were of opinion that they should expedite the dissolution as much as possible, and confine their legislation, 'generally speaking, to that which was necessary;' in other words, 'to the supplementary Reform Bills and the Estimates.' Various government measures would accordingly be dropped. But it was urged that there were 'special reasons' why the Bribery and Corruption Bill, the Telegraphs Bill, and the Foreign Cattle Importation Bill, should be allowed to proceed, either wholly or partially; although it was admitted that it

[p] Hans. Deb. pp. 1742–1745, 1815. Next day, a discussion arose as to an apparent discrepancy between the terms of the ministerial statement in the House of Commons and that given in the House of Lords, a point which has been noticed in a previous page; see *ante*, p. 394.

[q] See *ibid.* p. 1902; vol. cxcii. pp. 648, 797, 1035, 1224; vol. cxxiii. p. 1809.

[r] *Ibid.* pp. 435, 473, 485, 622, 841. See also the summary of proceedings on these Bills, in the Annual Register for 1868.

would be 'for the House to express an opinion' on this subject. Mr. Gladstone concurred in these arrangements,[s] and finally all the aforesaid Bills were passed through both Houses, except the Foreign Cattle Bill, which encountered great opposition, and was withdrawn.[t] Some difficulty arose on account of ministers proposing to take the Votes in Supply for the whole year, instead of for a limited period, and until the meeting of the new Parliament, agreeably to precedent in similar cases; but it being shown that the course proposed was advisable on the score of public convenience, the Opposition consented to it,[u] and the session closed without further strife.

Reviewing the relations of ministers towards the House of Commons during the whole of this session, it is evident that they were most unsatisfactory and objectionable. It would, however, be unfair to impute blame, indiscriminately, to any party or person, for what was really owing to a combination of circumstances, which prevented ministers from making that immediate appeal to the country from the adverse vote of the House of Commons which is ordinarily required by constitutional usage. By mutual consent, the ministers and the House of Commons agreed, that the dissolution should be deferred until the new constituencies were organised. This prolonged, for several months, the unseemly and unconstitutional spectacle of a ministry holding office by sufferance, and unable to exercise any effectual control over the proceedings of the House of Commons; a condition of things which, it need scarcely be said, was palpably at variance with the first principles of parliamentary government.[v]

Parliamentary interference in regard to dissolutions.

It is the undoubted right of either House of Parliament to address the crown, praying that Parliament may not be dissolved,[w] or to express an opinion in regard to the circumstances under which this prerogative has been exercised.[x] But modern authorities are agreed in deprecating any interference by Parliament with the right of the crown to appeal from the House of Commons to the country whenever it may be deemed expedient; whether the House may think such an appeal to be more or less advisable.[y] By general consent, the alternatives

[s] Hans. Deb. vol. cxcii. pp. 1065–1068.

[t] *Ibid.* vol. cxciii. p. 1775.

[u] *Ibid.* vol. cxcii. pp. 1126, 1223, 1602.

[v] See *ante*, vol. i. p. 2; Edin. Rev., vol. cxxviii. p. 572.

[w] See *ante*, vol. i. pp. 119, 157.

[x] *Ibid.* pp. 93, 126; Parl. Hist. vol. xxiv. p. 832; May, Const. Hist. vol. i. p. 459.

[y] Lord Palmerston, *ante*, vol. i. p. 156. Yonge, Life of Lord Liverpool, vol. i. p. 222.

of resignation of office, or of dissolution of Parliament, are now left to the discretion and responsibility of ministers; and though, when they have elected to dissolve, ministers have been met with remonstrances, there has been no direct attempt, since the memorable year of 1784, to interfere with the prerogative of the crown to dissolve Parliament when and for what reason it thought fit.[z]

The 'cry' at the elections.

A dissolution of Parliament having taken place, ministers are not limited in their appeal to the country to the question in dispute between themselves and the House of Commons, but are at liberty to raise any other issue, or rallying cry for the hustings, which they may consider to be consistent with their policy and principles.[a]

Pledges.

While it is usual for the ministers of the crown to appeal to the constituent bodies in regard to any given line of policy, or public measure, upon which they are desirous of eliciting the opinions of the country—an appeal which is responded to by the return of members more or less pledged as to the course they will pursue upon the particular question—the British Constitution rejects the idea that a member of the House of Commons is, in anywise, a delegate. Once chosen to this high trust, he should be at liberty to act upon his own independent judgment, as belonging to a free deliberative assembly; and though he is bound to respect any engagement that he has distinctly made, yet, if he be wise, he will be exceedingly chary of fettering himself with pledges and conditions, and will always bear in mind his paramount obligations as a member of the great council of the crown which is convened to decide upon matters of state as they arise, not for local reasons, or in accordance with

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[z] Lord Derby, *ante*, vol. i. p. 154; May, Const. Hist. vol. i. p. 460. 155; Peel's Memoirs, vol. ii. pp. 292–297.

[a] See *ante*, vol. i. pp. 138, 152,

local prejudices, but with a view to promote the highest advantage of the whole community.[b]

New Parliament decides upon the fate of Ministers.

The verdict of the country having been pronounced against ministers at a general election, it is, nevertheless, competent for them to remain in office until the new Parliament has met, and given a definitive and final decision upon their merits; for the House of Commons is the legitimate organ of the people, whose opinions cannot be constitutionally ascertained except through their representatives in Parliament.[c] It is necessary, however, and according to precedent, that the new Parliament should be called together without delay.[d]

Under such circumstances, it is usual to take the earliest opportunity to obtain a decisive vote upon the fate of the ministry. A suitable occasion is afforded by the Address in answer to the Speech from the throne, to which an amendment may be moved, to declare that the advisers of the crown do not possess the confidence of the House. This motion, if agreed to, will lead to an immediate resignation of the ministry.[e]

Proceedings on resignation of Ministers.

Whenever the Houses of Parliament are notified that the ministers of the crown have resigned, or have been dismissed from their offices, and that the administration is dissolved, it is customary for them to adjourn over to some future day, until a new ministry is formed. The motion to adjourn, upon such an occasion, is usually and properly made by one of the ex-ministers, at the request of the person who has been entrusted with the formation

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[b] Upon this subject, see Lord Brougham's excellent canons of representative government, in his Political Philosophy, part iii. ch. xi.; Grey, Parl. Govt. new ed. p. 77; Mill, Repres. Govt. p. 228; Park's Lectures, pp. 134–138, citing a valuable article from The American Jurist, No. 8; Hearn, Govt. of Eng. p. 475; May, Const. Hist. vol. i. p. 445; and Mr. Gladstone's earnest protest in the House of Commons against any 'circumstances by which the business of governing this country is taken from within the walls of this House and transferred to places beyond them.' Hans. Deb. vol. clxxxvii. p. 719.

[c] Russell, Life of Fox, vol. ii. p. 89; Mirror of Parl. 1835, p. 47; *ante*, vol. i. p. 138.

[d] *Ante*, vol. i. pp. 136, 147, 157.

[e] *Ibid.* pp. 138, 158.

of a new ministry.[f] Any further adjournments that may be necessary before the new arrangements are complete, should be proposed in a similar way.[g] For, notwithstanding their resignation, the out-going ministers are bound to conduct the ordinary business of the House, inasmuch as they retain the seals of office, and continue in full possession of their official authority and functions until their successors are appointed.[h]

Appointments to office by outgoing Ministers.

Upon this point, it has been declared by Sir Robert Peel, that 'though the members of an administration may have tendered their resignations, they were still entitled to make any appointments which the exigencies of the public service might require; and these appointments they were undoubtedly entitled to go on making until they were actually superseded by the entrance into office of their successors. It was always the practice to fill up vacancies. Peerages promised by a minister's predecessors in office had been granted, though no instrument had been signed or sealed on the subject. The moment it was proved that those peerages had really been agreed to by the out-going minister, he having taken the pleasure of the crown on the point, that moment the ministers in power agreed to confirm the grant, and thus respected the engagements of their predecessors. Occurrences of this kind constantly took place.'[i]

Nevertheless, the political power of filling up vacancies is one that is not invariably exercised by an out-going minister. In 1782, George III. interposed to prevent it;[j] and when the Russell ministry resigned in 1852, they left

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[f] Hans. Deb. vol. cxxiii. pp. 1705, 1706.

[g] *Ibid.* p. 1717.

[h] Parl. Deb. vol. xvi. p. 735. See, in reference to Mr. Pitt's position in 1801, *ante*, vol. i. p. 81; Stanhope, Life of Pitt, vol. iii. p. 296; see also Mirror of Parl. November 16, 1830 pp. 273, 536, 541; *ibid.* 1834, p. 2720; and see Campbell's Chancellors, vol. vi. p. 566; Campbell's Chief Justices, vol. ii. p. 389.

[i] Hans. Deb. vol. lxxiv. p. 82. William IV. created two or three peers after the Grey ministry had resigned, acting upon the advice of Earl Grey. Corresp. Will. IV. with Earl Grey, vol. ii. pp. 397, 405.

[j] Donne, Corresp. Geo. III. vol. ii. p. 419.

several vacancies not filled up.[k] But, in 1866, upon the dissolution of the second Russell ministry, an office was filled up by that government, which did not become vacant until two days after their resignation had been tendered to her Majesty.[l]

Proceedings when Ministers are out of Parliament.

During the interval between the resignation of a ministry and the appointment of their successors in office —an interval which has varied in duration, within the past century, from one to thirty-seven days[m]—and likewise during the period which must necessarily elapse from the issue of new writs in the House of Commons on behalf of the incoming ministers and their re-election, whatever may be the abstract right of Parliament to continue its deliberations,[n] it is not customary for any important political question to be discussed in either House of Parliament.[o] It is usual to adjourn, from time to time, over these periods, meeting only in order to dispose of 'business which is absolutely essential, and beyond dispute.'[p] If the Houses continue sitting, as a general rule, 'no motion on which a difference of opinion would be likely to arise' should be submitted.[q]

But this rule admits of one exception. While it would not be regular to address the crown to ask for the production of papers whilst the sovereign was without any responsible advisers,[r] and no answer could be given to any such address until the sovereign had a responsible minister through whom to act;[s] yet, if a ministerial in-

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[k] Commons Papers, 1852–3; vol. xxv. pp. 344, 345; Hans. Deb. vol. cxxvi. p. 879.

[l] Hans. Deb. vol. clxxxiv. p. 751.

[m] See *ante*, vol. i. pp. 162–166.

[n] See *ibid.* p. 114.

[o] Mirror of Parl. Novemb. 1830, pp. 272, 337; Hans. Deb. vol. cxiv. p. 889.

[p] Hans. Deb. vol. cxix. p. 914; *ibid.* vol. cxxxvi. p. 1262; *ibid.* vol. cxlviii. pp. 1870–1892; *ibid.* vol. clxxxiv. pp. 692, 697, 722. During a ministerial interregnum in 1866, the royal assent was given by commission to several Bills. *Ibid.* p. 694. With regard to the sitting of select committees at such a time, the practice has not been uniform. See Mirror of Parl. 1835, p. 847; Hans. Deb. vol. clxxxiv. p. 649.

[q] Mirror of Parl. 1841, Sess. 2. p. 250; Hans. Deb. vol. cxxiii. p. 1709.

[r] Mirror of Parl. 1835. p. 819.

[s] Lord John Russell. Hans. Deb. vol. cxxv. p. 724.

terregnum should continue for an unreasonable length of time, it would be proper for the House of Commons to interpose, and by an address to the crown, endeavour to put an end to so injurious and inconvenient a delay.[t] Such addresses have been passed, or proposed to be passed, upon several occasions, and they have usually elicited from the sovereign a response in harmony with the constitutional opinions therein expressed.[u]

Interviews between the old and new ministers.

Upon the occurrence of a change of ministry, it is customary for the out-going ministers to explain to their successors, at personal interviews, the state of the public business in their respective departments.[v] They are also bound in honour to communicate to the proper officers any private information upon public affairs that may have been forwarded to them upon the presumption that they were still in office.[w]

Custody of official documents.

All public officers are required to leave behind them, when they retire from office, whatever public documents may have come into their possession during their term of office, in order that a complete history of all public transactions may be preserved in the archives of the department. Private letters, however, do not come within this rule, even though they may exclusively relate to affairs of state. But no ex-minister is at liberty to quote in Parliament from any document which he may have received while in office unless it has first been made public by being laid before Parliament.[x]

When an opposition comes into office, it is not expected to 'abandon its own engagements and adopt those

[t] Hans. Deb. vol. cxxxvi. p. 1300.

[u] See *ante*, vol. i. p. 214; May, Const. Hist. vol. i. p. 462.

[v] Hans. Deb. vol. cxix. p. 245; *ibid.* vol. cxxxv. p. 1226; vol. clxxxiv. pp. 1344, 1606. As a proof of Lord Melbourne's 'unselfish regard for the public interest, and genuine affection for the queen,' it has been stated, that upon relinquishing the premiership, in 1841, 'he thoughtfully communicated to his successful rival (Sir R. Peel) all the suggestions which he thought likely to facilitate the communications of the new government with her majesty.' Saturday Review, August 3, 1867, p. 152.

[w] Hans. Deb. vol. cl. pp. 404–409, 526; and see *ante*, p. 384.

[x] Hans. Deb. vol. clxix. pp. 378, 475; and see *post*, p. 507, and vol. i. p. 605.

The opposition, when in office.

of its antagonists.'[y] And though, as we have seen, it is customary for in-coming ministers to ratify and give effect to the intentions of their predecessors in the distribution of personal honours and rewards,[z] yet they are under no such obligation in any matter which involves a question of public policy. If they disapprove of contemplated arrangements, agreed upon by their predecessors, but not fully completed when the change of ministry took place, they are justified in peremptorily overruling such arrangements; and they may properly avail themselves of any technicality to refrain from the formal completion of a grant, appointment, or commission, issuable by the crown, for which they are not willing to become responsible.[a]

It has never been the usage in England for any government, upon acceding to office, to make use of its power and influence in Parliament to bring under investigation the acts of its predecessors. Those acts were open to parliamentary criticism when they were performed, and being uncondemned at the time must be presumed to have been sanctioned. It is, of course, competent to Parliament to investigate particular matters of complaint against individual ex-ministers, whenever facts are brought to light which call for enquiry.[b] But the power of a government should never be employed against their predecessors in office to obtain a censure upon their past policy for mere party considerations, or to promote an enquiry into the policy and justice of public measures which were undertaken by them whilst they held the reins of government,[c] except with a view to the reform of administrative defects or abuses.[d]

[y] Sir G. C. Lewis, Hans. Deb. vol. cliii. p. 1424.

[z] See *ante*, p. 415.

[a] See cases in Parl. Deb. vol. ix. p. 426; Hans. Deb. vol. clxix. p. 777; *ibid.* vol. clxxxv. p. 1321; and *ante*, p. 319.

[b] As for example, the allegations against Lord Palmerston, in 1861, for alleged falsification of despatches, under a former administration. Hans. Deb. vol. clxii. p. 37; *ante*, vol. i. p. 303, *n.*; see also *ante*, p. 378.

[c] Lord John Russell and Sir Robert Peel, Hans. Deb. vol. lxvii. pp. 147, 184.

[d] *Ante*, vol. i. pp. 334, 414.

Our sketch of the origin, development, and present state of the governmental system of England, and of its relation to the crown on the one side, and to Parliament on the other, is now complete.

Review of the past.

In reviewing the successive phases through which the constitution has passed, from the Norman Conquest to our own day, we observe that they exhibit, in turn, the supremacy of political power in the crown, under prerogative government; in the higher classes, from the period of the Revolution to the Reform Bill of 1832; and in the aristocratical and middle classes combined, from that epoch until now. By the enlargement of the representation in 1867 and 1868, we have entered upon a new era, wherein the democratic element will undoubtedly be in the ascendant, and under which we may expect to find all our institutions, both in Church and state, severely tried.

Beginning of a new political era.

It seems fitting, at such a time, to point out, to those who are now entrusted with political power, the practical operation of that system, wherein the various excellences of the monarchical and aristocratical elements have hitherto harmoniously combined, with those of popular representation, to ensure a vigorous and stable government, to promote the national welfare, and to maintain the liberty of the subject unimpaired.

The continuance of these blessings to the British nation, under their extended franchises, must depend upon their holding fast their allegiance to those fundamental principles of government which form the unwritten law of the constitution, and embody the wisdom and experience of many generations. By a recognition of these principles, the authority of the crown, and the influence of property, have each been permitted a legitimate share in controlling the deliberations of the House of Commons, which has now become the centre of supreme political power in the state. A House of Commons wherein the executive is strong—and wherein the advisers of the crown can

administer the government, and guide the course of legislation, upon a definite policy, known and approved by an adequate majority of that chamber—is the last refuge of the ancient monarchy of England. But in order to secure this result, the House of Commons itself must be free; not subservient to the fluctuating will of the people, or hampered by pledges in respect to its future actions. Otherwise, it cannot give an intelligent support to the queen's government, by whomsoever it is administered, or rightly fulfil its appointed functions. A House of Commons dependent upon popular caprice, and swayed to and fro by demagogues out of doors, will inevitably produce a ministry which will be a reflex of its own instability, and which will attempt to govern without having a fixed policy, and as the mere exponent of the will of an unenlightened and tyrannical democracy.[e]

Mr. Mill's timely advice to the House of Commons.

I cannot more appropriately conclude this chapter than by quoting the words of one of the most eminent expounders of representative government, whose ideas, though elaborated in the closet, have been tested and confirmed by practical experience in Parliament. In one of his latest speeches to the House of Commons he says:—

'When a popular body knows what it is fit for, and what it is unfit for, it will more and more understand that it is not its business to administer, but that it is its business to see that the administration is done by proper persons, and to keep them to their duties. I hope it will be more and more felt that the duty of this House is to put the right persons on the Treasury Bench, and when there to keep them to their work. Even in legislative business it is the chief duty—it is more consistent with the capacity—of a popular assembly, to see that the business is transacted by the most competent persons: confining its own direct intervention to the enforcement of real discussion and publicity of the reasons offered *pro*

[e] See an able and instructive article on 'Democratic Government in Victoria,' in the Westminster Review for April, 1868.

and *con*; the offering of suggestions to those who do the work, and the imposition of a check upon them if they are disposed to do anything wrong. People will more value the importance of this principle the longer they have experience of it.'[1] This wholesome advice has been given at a very seasonable time; and it may be hoped will not be disregarded by the representatives of the people in the Reformed Parliament.

[1] Mr. J. S. Mill, June 17, 1868; Hans. Deb. vol. cxcii. p. 1731.

CHAPTER V.

THE DEPARTMENTS OF STATE—THEIR CONSTITUTION AND FUNCTIONS.

HAVING described the parliamentary duties and responsibilities of the ministers of the crown, we have next to consider their administrative functions.

Administrative departments.

We therefore now proceed to examine the origin of the various departments of state, and the particular duties which devolve upon the ministerial officers in charge of the same. This enquiry is not intended to embrace a detailed account of the routine of business in the several public departments, but rather to point out the share allotted to each in the general government of the empire, the relations of the different departments to one another, and the method by which the separate parts of our political organisation are subordinated to the supreme authority of the crown, as exercised through the instrumentality of the Cabinet....

In reviewing the origin and growth of the principal departments of state, we cannot fail to observe how largely they have been indebted to parliamentary criticism for their present form and efficiency. For nearly one hundred years past,[a] Parliament has persevered, with more or less earnestness, in the work of administrative reform. Numerous select committees of the House of Commons have been appointed from time to time to investigate the internal condition and management of the

Re-modelled by Parliament.

[a] Commencing with the efforts of Economic Reform. See May, Const. History, vol. i. p. 200. Edmund Burke, in 1780, on behalf of

public departments. In the light of the information thus obtained, successive administrations have devoted themselves to the task of improving this portion of our national polity, and of bringing it into stricter harmony with the general principles of constitutional government. From the period of the war with Russia in 1854,[b] the process of departmental reconstruction has been going forward at an accelerated pace; and if the future labours of Parliament, in this direction, are characterised by the same spirit of cordial and enlightened co-operation between the ministers of the crown and the representatives of the people which they have hitherto exhibited, we may confidently hope that they will serve to detect and remove the defects which still disfigure certain parts of our executive system, and which are attributable mainly to the want of sufficient vigour in the controlling authorities, and to an excessive adherence to routine.

The Treasury.

THE TREASURY, which first claims our attention, is the chief and most important department of the executive government. It consists of a board of five members, who are officially known as 'the Lords Commissioners for executing the office of Lord High Treasurer.' The board comprises the first Lord of the Treasury (who is usually the Prime Minister), the Chancellor of the Exchequer, and three junior Lords.

The Lord High Treasurer (whose badge of office was the white staff) was anciently the sole head of the Treasury, and the most powerful minister of state in England;[c] but no one has been appointed to this high office for more than a century and a half. The last person upon whom it was conferred was the Duke of Shrewsbury, who was appointed by Queen Anne on July 30, 1714, only two days previously to her death. The circumstances of this appointment were very remarkable, and have been already mentioned in a former chapter.[d] On the 13th of

[b] See *ante*, p. 177. p. 538.
[c] Macaulay, Hist. of Eng. vol. iii.
[d] *Ante*, p. 106

the following October, George I. nominated the Earl of Halifax and four other persons, of whom the Chancellor of the Exchequer was one, to be 'Lords Commissioners for executing the office of Lord High Treasurer;' and the office has continued in commission ever since. According to the terms of the patent (in which respect it is identical with that of the Board of Admiralty, which was first put into commission about the same time), the several members of the board are on a footing of perfect equality. The practice of putting these great offices of state into commission originated long before the Revolution, but it did not become invariable, in respect to the Treasury, until the accession of George I.

From a fragmentary 'Account of the Court of George I.,' written by Mr. Wortley Montagu, who was one of the lords of the Treasury in 1714, we learn that the commissioners used all to be men of considerable importance up to that period, and were never dependent upon the first lord, or nominated by him, but by the king himself, until the time of Lord Oxford, who was first lord in 1711, and chose all his colleagues upon the board.[e] In 1715, the celebrated Robert Walpole became first lord, since which period the junior lords have always been subordinate to and dependent upon the first lord; and although the terms of the patent remain unaltered, nevertheless the position of the junior lords has become, by usage, to be one of inferiority and subordination.

First Lord of the Treasury,

The position and duties of the *First Lord of the Treasury* will first claim our attention. Ever since the year 1806, this important office has been filled by the Premier, or First Minister of the Crown. Although, as we have already seen,[f] there is no necessary connection between the two offices, yet the length of time in which they have been associated, renders it increasingly improbable that hereafter they will be again divided. Accordingly, it will

[e] Letters of Lady Mary Wortley Montagu, edited by Lord Wharncliffe, 3rd edit. 1861, vol. i. pp. 120, 140.

[f] *Ante*, p. 140.

be convenient and appropriate, in this place, to consider of them together. and Prime Minister:

The First Lord of the Treasury occupies a position of great dignity and authority. His duties are not confined to the departmental business of the Treasury—which, indeed, is principally transacted by the other members of the board—but he chiefly occupies himself with the consideration of questions of public policy. As head of the government, he exercises a controlling influence in the Cabinet, and is virtually supreme over his colleagues, and must therefore be cognisant of all matters of real importance that may take place in any of their respective departments. He is the medium of intercourse between the Cabinet and the sovereign, and has to conduct the whole of the official communications which may be necessary between the sovereign and his responsible advisers. To enable him to discharge this duty aright, it is indispensable that he should have cognisance of every important state paper, or despatch, that may emanate from, or be received by, any branch of the executive government, in order that he may be prepared to advise upon the same. For example, he cannot consult with the Secretary of State for Foreign Affairs, and exercise the influence which he ought to possess with respect to our intercourse with foreign nations, unless he is master of everything of real importance going on in that department. So also with respect to the other departments—the Home and Colonial Offices, India, Ireland, the Finance, and the War Offices—he cannot judge of the policy to be pursued therein, unless he is acquainted with all the current correspondence of any importance appertaining thereto.[g] The precise order in which the despatches received, and the drafts prepared in reply, are brought under the notice of the Prime Minister will be hereafter explained.[gg]

The Prime Minister has necessarily to maintain an

[g] See *ante*, p. 214. Murray's Handbook, p. 126.

[gg] See *post*, pp. 498, 511.

His duties.

extensive correspondence. Besides the enquiries he has to make in reference to the exercise of the patronage of the crown, he has to write letters on political matters which are engaging the attention of his government, and generally to keep up an extensive correspondence on state affairs. He has continually to receive deputations on matters of public interest, and must find time for attendance at court ceremonials. During the sitting of Parliament, he is expected to be present in his seat in the House six or seven hours of the day for four or five days in the week, to explain and defend the policy of government, and to guide the deliberations of the legislature.[h] To assist him in fulfilling these onerous and multifarious duties, it is requisite that in addition to the cordial co-operation of his colleagues generally, he should be able to avail himself occasionally of the services of one or two members of the Cabinet, whose departmental labours are inconsiderable, and who are therefore free to give the benefit of their assistance to their over-burthened chief, bringing with them the influence of high office, and bound to him by the ties of a common responsibility. This important duty is discharged by persons specially selected to fill offices without any laborious functions attached to them, in order that they may be at liberty to assist their colleagues, and especially the Prime Minister, from time to time, as may be required.[i]

Emoluments.

The salary of the First Lord of the Treasury is now fixed at 5,000*l.* a year, with an official residence, but with no other perquisites or emoluments whatever.[j] In former times the First Lord of the Treasury used frequently to hold, or 'appoint himself to,' other offices in connection

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[h] Lord Brougham tells an anecdote, that 'when the conversation once turned upon the quality most required in a Prime Minister, and one said eloquence, another knowledge, a third toil, Mr. Pitt said, "No, patience."' (Sketches of Statesmen, vol. i. p. 278.)

See *ante*, p. 165.

[j] Rep. on Off. Sal. 1850. Evid. 22, 23. He has an allowance for two private secretaries (*ibid.* 267); but this advantage he shares in common with other members of the government, who are ordinarily allowed one such officer.

therewith, as a means of increasing his emoluments. For example, he has generally held the office of Lord Warden of the Cinque Ports, which used to be worth 4,000*l.* or 5,000*l.* a year, with a residence by the sea-side, and other advantages.[k] But since Lord Liverpool's time, no First Lord has held any other office with emoluments, and those appertaining to the wardenship of the Cinque Ports (since held by the Duke of Wellington and by Lord Palmerston, in conjunction with the premiership), have been abolished, nothing remaining but the right to occupy the Warden's Castle at Dover.[l] The only exception to this has been that, until a very recent period, the office of Chancellor of the Exchequer was frequently held together with that of First Lord of the Treasury, especially when the Premier has been a member of the House of Commons. The two offices were held jointly by Mr. Pitt from 1783 to 1801, and afterwards from 1804 to 1806, by Mr. Addington from 1801 to 1804, by Mr. Perceval from 1809 to 1812, by Mr. Canning from April to July 1827, and by Sir R. Peel during his short tenure of office, from December 1834 to March 1835. On this last occasion, in accordance with the recommendations of a committee of the House of Commons in 1830, the joint salary for the two offices was limited to 7,500*l.* instead of, as heretofore, the full salary of 5,000*l.* for each office.[m] But when Sir Robert Peel was again called upon, in 1841, to form an administration, he determined not to undertake the double duty, but selected another person for the office of Chancellor of the Exchequer, retaining for himself the post of First Lord. This being the first instance in which the office of First Lord of the Treasury had been filled by a commoner, except in conjunction with that of Chancellor of the Exchequer, Sir R. Peel formally assimilated it to the same office when

[k] The official emoluments of Lord North as First Lord of the Treasury, as Chancellor of the Exchequer, and as Lord Warden, exceeded 12,000*l.* a year. Donne, Corresp. Geo. III. vol. ii. p. 195.

[l] Rep. on Off. Sal. 1850. Evid. 16–26, 255.

[m] *Ibid.* 245.

held by a peer. Since then the two offices have always been held by separate individuals; and from the great increase of ministerial and parliamentary business, it is very improbable that they will be again combined, unless it should happen that a person peculiarly qualified to be Chancellor of the Exchequer might, on becoming First Lord of the Treasury, desire to retain both appointments.[n]

The First Lord of the Treasury is an *ex-officio* trustee of the British Museum and of the National Gallery.[o]

By stat 10 Geo. IV. c. 7, a Roman Catholic is disqualified for the office of First Lord.

Although the salary attached to this office is very inconsiderable, and can afford no inducement to a statesman to incur its toils and responsibilities, yet it is doubtless 'a very great thing to be at the head of the administration, and to direct the resources of the country.'[p] A laudable and patriotic ambition to serve the public, and to connect his name honourably with the history of the state, are sufficient motives to actuate anyone to undertake the discharge of such exalted functions. As a matter of fact, no Prime Minister during the last century, however powerful, has become rich in office; and several (for example, the Duke of Newcastle and the younger Pitt) have impaired their private fortunes in sustaining their public position. It is well that there should be no pecuniary advantages directly connected with the supreme direction of public affairs; and it is also a fortunate circumstance that, in England, the emoluments of the highest class of functionaries have not increased, but rather diminished, in proportion to the general growth of national wealth.[q]

In estimating the advantages arising from the possession of office, it is necessary to enquire what are the facilities it affords to a minister, and especially the Prime Minister, to benefit himself, the members of his family, or

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[n] Rep. on Off. Sal. 1850. Evid. 246, 1255.

[o] *Ibid.* 303.

[p] *Ibid.* 1373.

[q] *Ibid.* 90, and see Journal of Statistical Society, vol. xx. p. 105.

his personal friends, in the distribution of the patronage of the crown. Patronage of the Prime Minister.

So recently as 1810, as appears by official returns, there were no less than 242 sinecure offices in existence, throughout the king's dominions, yielding an aggregate income of nearly 300,000*l.* per annum. The Reform ministry of Lord Grey, immediately upon taking office, announced their intention of abolishing 210 sinecure places;[r] and as a result of the labours and recommendations of committees of the House of Commons in 1810 and 1834, the work of reduction was steadily carried on, so that by the year 1850, it is presumed that they had been entirely done away with; the intention of Parliament to abolish all sinecure offices, as a means of reward, having been unmistakably expressed. Now, among those sinecures were places which the ministers of the crown had, generally, the power of appropriating to themselves, or their relatives. These offices were specially referred to by Mr. Burke, in his memorable speech upon Economical Reform in 1782, as having been then left untouched expressly because they were considered as a legitimate means of enabling ministers to reward public servants, and to make provision for their own descendants.[s] But sinecures have since come to be regarded in a very different light. Any minister who would now seek to enrich himself or his friends at the expense of the state would be justly exposed to public censure; and accordingly all opportunity for the perpetration of such abuses has been removed by the total abolition of offices of this description.[t]

The question of patronage was fully discussed before the committee of the House of Commons on official salaries, in 1850. It was then contended by Sir Robert Peel, and others, who had filled the principal offices in

[r] Mirror of Parl. Feb. 11, 1831, p. 168.

[s] Rep. on Off. Sal. 1850. Evid. 253, 254.

[t] *Ibid.* 255.

Ministerial patronage generally.

the state, that in the distribution of the patronage of the crown, it was perfectly justifiable to give a preference to the relatives and connections of those in power, provided they were otherwise competent for the same. But it was alleged that more care is taken now than formerly in making appointments to office; the minister now acts under the control of public opinion, the influence of the press, his own conscience, and his responsibility to Parliament. The selection of persons to fill so many offices in the public service as ordinarily become vacant during the existence of an administration is a very great privilege and a very great trust.[u] If a minister has relations whom he knows to be properly qualified, and who agree with his own political views, it has generally happened that he has appointed some of them to office. But of late years they have generally been offices held during pleasure, and terminable with his own. For now-a-days, a Prime Minister could not confer very large benefits upon his own immediate relations or dependents without compromising his public character.[v] Sir James Graham, at the close of a long career, thus expressed himself on this subject:—'I do think that the claims of friends will be considered by those who have patronage in their hands; and the great question is, whether, on the whole, it is abused. Publicity is a check, and I am disposed to think, having closed my career of patronage, that, on the whole, public character is so valuable to public men, that much abuse of patronage, in the days in which we live, is not to be apprehended.'[w] There is certainly immense power in the hands of the Prime Minister; but at the same time the amount of patronage of which he has the absolute disposal, and by which he can make provision for those among his relatives and dependents, who may possess the necessary qualifications, is in reality very small.[x] Such

[u] Rep. on Off. Sal. 1850. Evid. 282–284.

[v] *Ibid.* 1270, 1271.

[w] Report on Board of Admiralty, 1861, p. 154.

[x] Rep. on Off. Sal. 1850. Evid. 314–316.

are the difficulties and responsibilities attending the exercise of patronage, and the many considerations affecting the interests of the party in power, that must be taken into account, that even Mr. Pitt is known to have said that it never but once occurred to him, during his long and powerful administration, that he was able to place exactly the man he wished into the office for which he deemed him to be the best qualified.[y]

The amount of patronage attached to most of the principal departments in the state, and especially to that of the first minister of the crown, is undoubtedly large. It is also rather on the increase, as the resources of the country are enlarged and its colonies extended. But it brings with it no pecuniary advantage, whatever, to its possessor.[z]

The exact limit of the authority of the Prime Minister in the distribution of patronage cannot be very strictly defined. The amount of patronage in his hands, either by way of nomination or recommendation, must be very great. He is virtually responsible for the disposal of the entire patronage of the crown. Practically, however, he permits his colleagues in the ministry to recommend the filling up of vacancies connected with their respective departments; reserving to himself the right of control, in all cases.[a] But we have the testimony of Sir Robert Peel that, in the whole of his experience, he did not remember any difficulty with his colleagues upon a question of patronage.[b] It is, in fact, extremely improbable that a Prime Minister should be obliged to resort to extremity, or should be compelled to dissolve the Cabinet by his own resignation of office, in order to effect an appointment in any branch of the executive government contrary to the wishes of the departmental chief. There is, or ought to be, such an intimate concert and

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[y] Rep. on Off. Sal. 1850. Evid. 1267.

[z] *Ibid.* 275, 276, 290, 1278.

[a] *Ibid.* 291. (Parkinson's Under Govt. 175.)

[b] *Ibid.* 291, 292.

cordial agreement between all the chief ministers of state, as would naturally induce them to confer together in regard to every important appointment. In other words, no such appointment should be made, by any departmental head, without previous communication with the Prime Minister; who, for his own part, should not directly make any appointment, except it be a recognised part of his patronage. All other appointments should be officially made by the minister presiding over the department; though not without previous consultation with the Prime Minister, in the case of all important appointments.[c]

Distribution of patronage.

The general rule in regard to appointments to office, by the Prime Minister, and by his colleagues in the government, has been thus stated:—In a department which is presided over by a political head, all appointments that are not of special importance are usually in the gift of the head of the department. Where there is no political head, appointments are usually conferred by the Prime Minister, acting through one of the parliamentary Secretaries to the Treasury, who is commonly known as the patronage secretary. The nominations or appointments in the Inland Revenue and Customs departments, are made in this manner. With regard to the Post-office, which is under a political head, but yet is a revenue department, and therefore subordinate to the Treasury, a portion of the officers receive their appointments from the Postmaster-General, and the remainder are nominated by the Secretary to the Treasury.[d] In the case of the more important

[c] Rep. on Off. Sal. 1850. Evid. 278, 288. Mr. Pitt, however, insisted on the appointment of Sir Pepper Arden, as Master of the Rolls, notwithstanding the known aversion of Lord Chancellor Thurlow to the man, saying, 'Pepper, you shall have the office; and as to Thurlow, I may just as well quarrel on that as any other subject with him.' (Campbell's Chancellors, v. 602.) Upon another occasion, when the Prime Minister attempted to interfere with Lord Chancellor Eldon's patronage in filling up a vacancy on the bench, his lordship appealed to the king, respectfully claimed the right of recommendation, and concluded by tendering his own resignation. This act of firmness had the desired effect of inducing the Prime Minister to give way, and to permit the Chancellor's nominee to be appointed.—*Ibid.* vii. 654.

[d] See *post*, p. 485.

offices under the crown ; as for example that of Governor-General of India ; the Prime Minister would have at least as much influence in the choice as the secretary or other functionary in whose department the formal appointment might be. At the same time, the Prime Minister is so much engrossed with his own duties, that he would ordinarily be glad to leave to the departmental chief the privilege of making all appointments, excepting such as would materially influence the conduct of public affairs.[e]

Special patronage of Prime Minister.

The Prime Minister himself, as we have seen,[f] virtually selects all his colleagues in the ministry. And it is upon his recommendation that new peers are created; and other distinguished honours conferred by the crown, excepting in certain cases, hereafter to be noticed, where honours are bestowed upon the recommendation of a secretary of state. He also recommends to the sovereign all appointments among the archbishops, bishops and deans of the Established Church ; and to all the church livings belonging to the crown which are not in the gift of the Lord Chancellor. These benefices are about 120 in number, and are principally valuable livings. Contrary to the practice in regard to the smaller livings, which are disposed of by the Chancellor, upon his own discretion and responsibility, the Prime Minister consults the crown upon the distribution of all this church patronage ; excepting only some very small livings which have been lately established.[g] But so heavy is the responsibility which devolves upon the Prime Minister in filling up bishoprics, and appointing to high offices of state, that we are assured it brings with it 'very little personal gratification.'[h]

The patronage which is regarded as the most disagreeable and invidious for the Prime Minister to exercise, is

[e] Rep. on Off. Salaries, 1850. Evid. 293, 304, 307.

[f] *Ibid.* 1264. (And see *ante*, p. 152.)

[g] *Ibid.* 277, &c. 1273, &c. (And see *post*, p. 691.)

[h] *Ibid.* 309, 1282, &c.

that which especially appertains to the Treasury, in connection with the revenue departments. Promotions in this branch of the public service, however, are usually determined upon certain fixed rules; and the actual power of the Treasury, except in the appointment of the Revenue Commissioners, and other principal officers, is in reality very small.[i]

Competitive Examinations.

Moreover, since the introduction of the principle of competitive examinations for appointments in the civil service, and the gradual extension of that system to the different departments of state, the direct patronage of ministers of the crown has been materially diminished.[j]

The Chancellor of the Exchequer.

THE CHANCELLOR OF THE EXCHEQUER is the second member of the Treasury Board, and the one who is personally responsible to Parliament for everything done at the Treasury.[k]

In point of fact, he exercises at present all the powers which formerly devolved upon the Treasury Board. Subject to the provisions of law which regulate the office of Comptroller of the Exchequer, and Auditor-General of the Public Accounts, the Chancellor of the Exchequer has the entire control and management of all matters relating to the receipt and expenditure of public money, from whatever source it is derived, even including the private revenues of the sovereign; and the custody of all public property, or property belonging to the crown. In the execution of these duties, he has to frame regulations, &c., for conducting the business of all the financial departments of the country; and also to control the expenditure and fix the salaries and expenses, not only of those departments, but of all other offices, wherein there is an expenditure of public money. And he is called upon to decide, within the limits of the law, upon all questions between the sovereign and the subject, which may arise out of the receipt and expenditure of public money, &c.[l]

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[i] Rep. on Off. Sal. 1850. Evid. 308, &c.

[j] See *ante*, vol. i. p. 385.

[k] Rep. on Off. Sal. 1850. Evid. 34, 102.

[l] Report on Misc. Expenditure, Commons' Papers, 1847–8, xviii. p. 419. Thomas, Excheq. of England, p.

His control of public expenditure.

The annual estimates of the sums required to defray the expenditure of government in every branch of the public service, while they are submitted to Parliament by the Cabinet collectively, are framed upon the especial responsibility of the Chancellor of the Exchequer, who must satisfy himself that they have been prepared with a due regard to economy, and to the exigencies of the public service, as well as in proper relation to the whole financial interests of the country. It is true that the ministers who preside over the War and Admiralty departments,—being specially cognisant of the requirements of the state in this behalf,—must be free to form a conclusive judgment as to the expenditure required for the adequate defence of the country, in peace or war.[m] Nevertheless, it is the duty of the Chancellor of the Exchequer, in conference with his colleagues in the Cabinet, to oppose all expenditure which he may deem improper, in a financial point of view; bearing in mind that his official responsibility for the supplies sought for from Parliament is very great, and exceeds that of any other minister, except the head of the government, and the minister in charge of the particular department on behalf of which the expenditure is required. For it is his peculiar duty to advise the House and the country in all financial matters, including the relations, the course, and the prospects both of revenue and expenditure.[n]

His Budget.

It is also his duty to prepare and submit to the consideration of the House of Commons the annual statement of the estimated expenses of government, and of the ways and means whereby it is proposed to defray these charges, including the imposition or remission of taxes, which is known as 'the Budget.' When about to commence the preparation of a Budget, the Chancellor of the Exchequer obtains from the permanent heads of the revenue department their estimates of the public revenue for the ensuing

[m] See *ante*, vol. i. p. 558 *n.* 561–566.

[n] Mr. Gladstone, in Hans. Deb. vol. clxvi. pp. 1388–1395.

year upon the hypothesis that the existing taxation will remain unchanged. If, afterwards, he decides upon an alteration in the taxes, he requires a report upon the probable effect of the same. If he proposes to renew exchequer bills, or otherwise operate upon the money market, he consults with the principal officers at the National Debt Office and at the Treasury. Finance Ministers have frequently expressed their obligations to these skilled advisers for their valuable assistance upon such occasions.[o]

Since the year 1661, the office of Chancellor of the Exchequer has been combined with that of Under Treasurer, which is properly the financial office, and by virtue whereof he performs most of the functions anciently performed by the Lord High Treasurer. The two offices, however, are still held under separate patents.

His judicial functions.

The Chancellor of the Exchequer was formerly a principal officer both of the Court of Exchequer and of the Receipt of Exchequer; but he has now very little connection with the former, and is not included in the modern constitution of the latter. So late as 1735, Sir Robert Walpole, as Chancellor of the Exchequer, sat judicially in the Exchequer Court, and gave judgment in a case wherein the barons were equally divided.[p] Now-a-days, the only occasion on which the Chancellor of the Exchequer takes his seat amongst the barons is on the annual nomination of sheriffs, when he sits first of all the judges who assemble at that ceremony.[q] He also presides, in the absence of the Lord Chancellor, at the court which is held about once in every six years for 'the trial of the pyx,' for determining the sufficiency, in weight and fineness, of the gold and silver coins issued from the Mint. It then becomes his duty to deliver a charge to the pyx jury: if the Lord Chancellor, as the senior officer, be not present.[r] By an Act passed in 1866, the custody

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[o] See *ante*, p. 175. Bagehot, in Fortnightly Review, vol. vi. p. 536.

[p] Cox, Inst. p. 695.

[q] Thomas, Eng. Excheq. p. 102.

[r] Mr. Chisholm's Rep., in Commons' Papers, 1866, vol. xl. p. 61.

of the standard trial pieces of gold and silver coins, and all books, documents, and things used in connection therewith—and which had been previously deposited in the Exchequer office—were transferred to the charge of the Commissioners of the Treasury, to be deposited in any place they may direct.[s] They have been assigned to the care of a warden of standards, who is one of the assistant secretaries to the Board of Trade.[t]

Seals of Office.

According to ancient usage, when the office of Chancellor of the Exchequer is vacant, the seals of it are delivered to the Chief Justice of the King's Bench for the time being, who transacts certain formal business appertaining to the Court of Exchequer until a new Chancellor is appointed;[u] when the duties in question are performed by the 'sealer and under secretary to the Chancellor,' an officer who is appointed by the Chancellor of the Exchequer for the time being.[v] There are two seals used by the sealer; one, the great seal of the Court of Exchequer, the other a small one, containing the initial letters C. E. [Chancellor of the Exchequer.][w]

Patronage.

Appointments in the National Debt Office are in the gift of the Chancellor of the Exchequer; and as a leading member of the Treasury Board he has necessarily much influence in the disposal of the patronage appertaining thereto. He also appoints to the nominal office of steward of the Chiltern Hundreds,[x] and to other similar offices, which are bestowed for the purpose of vacating a seat in the House of Commons. His salary is 5,000*l.* per annum, with an official residence.[y]

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[s] Act 29 & 30 Vict. c. 82, sec. 13.

[t] See *post*, p. 674.

[u] Such a provisional arrangement rarely lasts more than a few days; but in 1757 Lord Mansfield continued nominally Finance Minister for three months, and speculations began to be made as to how, being a peer, he would be able to open the Budget. (Campbell, Chief Justices, vol. ii. p. 448.) In 1834, Lord Chief Justice Denman held the office for eight days.

[v] Thomas, Eng. Excheq. p. 102.

[w] *Ibid.* p. 103.

[x] See *ante*, p. 284.

[y] Murray's Handbook, pp. 127, 131, Thomas, Hist. Pub. Depts. pp. 12-16.

The Treasury Board.

Treasury Board.

According to modern usage, the Treasury is regarded as the highest branch of the executive government. It has the entire control and management of the public revenue and expenditure; and exercises a supervision over all the revenue officers and public accountants of the kingdom; and, so far as receipt and expenditure are concerned, over every department of the public service.[z]

The nominal constitution of the Treasury, under the patent issued to the Lords Commissioners thereof, is the transaction of business by a board of five members of equal authority, any two or more of them being competent to execute the authority of the whole.[a] Originally, when the business of the Treasury was much smaller than it is at present, it was really transacted by the Board, in presence of the sovereign who occupied a chair which still remains at the end of the board-room. The First Lord, the Chancellor of the Exchequer, and the junior lords (then four in number) used to sit at the table: the secretaries attended with their papers, which they read; and the sovereign and the lords gave their opinions thereon; the secretaries taking notes of the proceedings, which were afterwards drawn out in the shape of minutes and read at the next board meeting. When business increased during the seven years' war, the American war, and especially the French war, it could no longer be disposed of in this way; and it then came to be transacted on the principle of individual responsibility. The passing of papers at Board meetings was still retained, however, in order to preserve regularity, and to comply with the directions of certain Acts of Parliament, and the usages of government, all of which had regard to that method, in the transaction of Treasury business. But gradually

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[z] Act 56 Geo. III. c. 98. And see *ante*, vol. i. p. 556.

[a] See the Commission appended to the Report of the Committee on the Board of Admiralty, 1861, p. 657. (Com. Papers, 1861, vol. v.)

the Board ceased to be a reality; and the business was transacted by the junior members, the secretaries, and the permanent officials; all of them being personally responsible to the Chancellor of the Exchequer and to the first Lord of the Treasury for the due performance of the same. After the sovereign ceased to attend at meetings of the Board, they were presided over for a time by the First Lord, or by the Chancellor of the Exchequer.[b] Then, for a number of years, neither of these functionaries ever met the Board, except on some extraordinary occasion, such as to take a loan; its formal meetings were attended only by the junior lords and the secretaries.[c] The manner in which the Treasury business was transacted, during this interval, is described in the Report of the Committee on Miscellaneous Expenditure, 1847-8, Commons' Papers, vol. xviii. pp. 144, 423, &c. But for the last twenty years or thereabouts the Treasury Board has practically ceased to exist. Its formal meetings were found to take up a great deal of time unnecessarily. Therefore, although still in theory a power it never assembles, and its functions are now exercised by the secretary and the permanent officials, acting under the general directions of the Chancellor of the Exchequer—who is the supreme authority of the Board in important financial matters—and also under the direction of other members of the Board, in particular cases, where certain branches of business have been entrusted to them. As a natural consequence, the position of the junior Lords of the Treasury has been materially altered. They are virtually set aside, and have no regular departmental duty to perform, excepting of a mere routine description, such as formally signing Board warrants pursuant to the directions of Acts of Parliament.[d]

[b] Report on Misc. Expenditure, Com. Papers, 1847-8, vol. xviii. p. 148. *Ibid.* 1860. Evid. 1370, &c.

[c] Report on Board of Admiralty, 1861, pp. 174, 316, 382.

[d] Report of Com. on Misc. Exp. 1860. Evid. 1370-1376. Report of Committee on Public Accounts, 1862. Evid. 774, &c., 1450, &c., 1766. Rep. Com. on Education, 1865. Evid. 611, 773, 774.

Treasury business.

The actual constitution of the Treasury at the present time is this: The First Lord does not concern himself with financial details, but leaves all such matters to be settled by the Chancellor of the Exchequer, who is the practical and effective head of the Treasury department.[e] The respective powers and functions of the several members of the Board, nominally of equal rank, but exercising widely different degrees of authority, has been determined by usage. This is partially indicated by the fact that while the salaries allotted to the First Lord and to the Chancellor of the Exchequer are each 5,000*l.* per annum, the junior Lords receive each but 1,000*l.*[f] All the Treasury business is now transacted by delegation from the Chancellor of the Exchequer to the individual officers who may be entrusted with the same. However objectionable this may appear in theory, in practice it works extremely well. Its peculiar advantage is, that with the name and authority of a Board—composed of great officers of state—there is combined a unity and vigour of administration by a single officer of the first financial ability. And this without disturbing the associations connected with the formal constitution of the office in the public mind, or its traditionary place in our political system.[g]

Treasury business now-a-days, instead of coming before the Board in detail, as formerly, is transacted by the executive officers of the department. First of all the papers are dealt with in the divisions of the office to which they relate; they are then submitted to the assistant secretary and investigated by him. After he has satisfied himself of the correctness of the proposals they contain, he passes them on to the financial secretary for his opinion. If this officer feels in doubt as to the proper decision he should give, he consults the Chancellor of the

[e] Rep. of Com. on Army before Sebastopol, 1854–5, vol. ix. pt. 3, p. 302. Rep. of Com. on Pub. Accounts, 1862. Evid. 783.

[f] Rep. on Board of Admiralty, 1861, p. 382. Murray's Handbook, p. 131.

[g] Rep. on Misc. Exp. 1847–8, vol. xviii. pp. 144, &c., 423, &c.

Exchequer, or perhaps, in certain cases, the other members of the Board. In all important or doubtful matters the Chancellor of the Exchequer would naturally be appealed to.[h] Nevertheless, the position of the Chancellor of the Exchequer towards the Treasury does not resemble that of a secretary of state towards his department. He is not able to exercise the same direct personal control, because much of the current business of the office does not come under his notice at all; and he is obliged to rely very much in matters of detail upon his official advisers, who know the precedents and keep up the traditions of the department, and who are able to assist him very materially in the course which he may have to pursue.[i]

The business transacted by the Treasury is of the most multifarious description. It is the duty of the Lords of the Treasury to 'provide for and take care of the king's profit,' including everything that concerns the pecuniary affairs of the nation. The Treasury should be able to exercise an effectual control and revision over the whole public income and expenditure, and to maintain a superintendence, more or less strict, according to circumstances, over the finances of the numerous colonies and dependencies of the crown, in order to be prepared to afford any requisite information for the use of Parliament, the country, or the government.[j] In this service, the revenue departments, the Boards of Trade, and of Public Works, and the Post Office, afford material assistance, and they may in fact be regarded as departments of the Treasury.

It is an important part of the business of this office to exercise a controlling and revising influence over the great establishments employed in the receipt and expenditure of the public revenue, and over all other depart-

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[h] Rep. Com. Pub. Accounts, 1862. Evid. 1766, 1767.

[i] *Ibid.* Mr. Gladstone, 1640.

[j] See *ante*, vol. i. p. 556.

Treasury business.

ments of the state in financial matters. Practically the superintending control of the Treasury is still further extended, for no new departmental arrangements involving a change in the existing relations between two or more public offices can be originated or matured without the sanction of the Lords Commissioners of the Treasury. All plans for consolidating two or more public offices, or for altering the duties appertaining to an existing department, must be either initiated or sanctioned by a Treasury minute.[k] This control over the other departments of state is vested in the Treasury by ancient usage, and is intended to ensure one governing and responsible power in regard to the expenditure needful for the public service. It is desirable that this control should be constantly exercised, even to the extent of preventing any temporary addition to the working staff of any office, or any increase of salary, extra allowances, or other emoluments being granted to individuals, or presents made of public property, by any other department, without the authority of a minute of the Treasury; so that Parliament can hold the Treasury responsible for every act of expenditure in each department.[l] It is accordingly the practice for the

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[k] Commons' Papers, 1854, vol. xxvii. pp. 99, 347. And see Appx. to Rep. of Com. on Military Organisation, 1860, pp. 469, 592–607. See also a paper on the Treasury Board, &c., in Companion to British Almanack for 1847, pp. 36–38. If a secretary of state, or other departmental head, requires additional assistance in his office, he communicates with the Treasury, stating the individuals he proposes to employ, and the salaries he recommends to be assigned to them, and requests the concurrence of the Treasury thereto. If the Treasury considers the arrangement objectionable, or the salaries excessive, they will suggest such alterations as they deem expedient. After these preliminaries have been agreed upon, if it is intended to create a new establishment, or to reorganise an existing establishment, the secretary or other presiding officer will submit to her majesty a warrant approving of the same. This warrant will be returned to him, signed by the sovereign, and countersigned by the Chancellor of the Exchequer. In this way, the control of the Treasury is secured, both in the inception and completion of the new arrangements. Rep. Com. Pub. Accounts, 1868, p. 45. Correspondence, and further correspondence as to the establishment of a new Department of Control at the War Office, Commons' Papers, 1867–8, Nos. 373, 373.—I.

[l] Report on Public Income and Expenditure, 1828, pp. 5, 6. Rep. Board of Admiralty, 1861, pp. 172, 213. Rep. Com. Public Accounts,

Treasury to append to the annual estimates any correspondence had with other departments on such subjects, when it may be necessary to submit the same to the consideration of Parliament. And there is 'no principle of finance more important than that of maintaining an efficient control over departmental expenditure, such as can only be exercised by a central office, like the Treasury.'[m]

The Treasury is pre-eminently a superintending and controlling office, and has properly no administrative functions. The two spheres of duty are distinct and incompatible.[n]

The ordinary functions of the Treasury consist in the preparation, under the direction of the political chiefs of the office, of estimates, reports, and statements connected with the public revenue and expenditure, or the financial concerns of other departments of state.[o] It has also to decide upon appeals from the decisions of its subordinate departments, in all cases arising out of the receipt of revenue, and to determine as to the remission or return of fines, estreats, and property forfeited to the crown. This business is of a judicial character, and is guided by precedents, with which the permanent officers are better acquainted than the Lord Commissioners.[p]

The business of the Treasury has increased with the increase of public business generally, and from the duty which is more and more required of the Treasury, of exercising a rigorous control over the expenditure of all the other departments. Every sort of expense, or money question, in any branch of the public service, at home or in the colonies, comes necessarily under the supervision

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1862, Min. of Evid. 841, 1172. Hans. Deb. vol. clxxxii. pp. 848, 890. First Rep. Com. Pub. Accounts, 1867, p. 12.

[m] Commons' Papers, 1854, vol. xxvii. p. 341.

[n] See Lord H. Lennox's and Mr. Gladstone's speeches, in Hans. Deb. vol. clxv. pp. 1751, 1787. On this principle the charge of the Commissariat Department, formerly belonging to the Treasury, was transferred in 1856 to the Secretary of State for War; see *post*, p. 557.

[o] Commons' Papers, 1856, vol. xiv. p. 562.

[p] Murray's Handbook, p. 128.

of the Treasury; and no expense can be incurred therein, for any purpose whatever, beyond that which has been sanctioned by the Treasury.[q] Practically, however, this rule is subject to some limitations, in respect to certain of the public departments. Since the appointment of a Vice-President of the Education Committee, the Treasury have ceased to exercise any direct control over the expenditure which may be recommended to them by that officer, for the promotion of education throughout the kingdom. In like manner, also, while the army and navy estimates are invariably submitted to the Treasury, who are competent to object to the details of any proposed expenditure for these services, yet, in the case of large undertakings, which have been deemed to be necessary by the military or naval authorities, the Treasury (especially in time of war) could not practically object. Should it appear, however, to the Board that any proposed expenditure, by any department, was disproportionate and excessive, the Lords would bring the matter before the Chancellor of the Exchequer, and if necessary, in a question of importance, through him before the Cabinet, so as to obtain a decision of the whole government upon the subject.[r]

Preparation of the Estimates.

All departments of the state being subject to the Treasury in financial concerns, it is essential that every facility should be afforded to the Treasury for the careful preparation of the estimates of supplies required to be voted by Parliament for every branch of the public service. The routine observed in this matter is as follows: in the autumn of every year a circular is addressed by the Financial Secretary of the Treasury, to every department of the government, including the naval and military establishments, requesting that by a certain date an estimate of the sums required by the particular department, for the service of the current year, may be prepared, for

[q] Rep. on Offic. Sal., 1850. Evid. 21, 22 [in Com. Papers, 1860, vol. 33, 34, 40. *Ante*, vol. i. pp. 558–569. ix. p. 473].

[r] Rep. on Misc. Exp. 1860, pp.

the information of the Treasury. The estimates are called for thus early, in order to afford time for considering the questions of supply, and of ways and means. They are framed, in each department, under the authority of the political head, who decides upon the items that shall be included therein; and in accordance with instructions conveyed to every department, through a secretary of state, to the effect that the estimates are to be framed as low as the exigencies of the service will permit. To facilitate a good understanding upon this important matter, it is customary that at least a month previous to the estimates being formally submitted to the Treasury, there should be a communication between the Chancellor of the Exchequer and the other ministerial heads, with a view to settle the principal items of the required expenditure. The estimates are then transmitted to the Treasury, to be drawn out in regular shape for communication to Parliament.[s]

These departmental estimates, however, are frequently delayed in their respective offices, and the Treasury thereby prevented from bestowing upon them the necessary degree of consideration. And the amounts for certain services in the civil estimates, even after consultation between the financial secretary and the chief clerks of the departments concerned, are often merely approximative.

In all ordinary cases, it devolves upon the Chancellor of the Exchequer to determine upon any question that may arise in the preparation of the estimates. But if the question be one of large national importance, and the demands on behalf of any particular service are greater than, in the opinion of the Chancellor of the Exchequer, the public finances will warrant, an appeal lies from his decision to the First Lord of the Treasury, and to the Cabinet.

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[s] Rep. Com. Pub. Accounts, 1862. Evid. 1342-1345. *Ibid.* 1865. Evid. 609-616, 2083, &c.

Preparation of the Estimates.

It has in fact been urged, by the First Lord of the Admiralty, that ministers connected with great departments, whose expenditure is liable to be altered by applications from secretaries of state, directing certain things to be done to carry out the policy of the government, should have an understanding between themselves in regard to the question of expenditure, and should not be required to communicate with the Treasury on matters of such high concern. Indeed, ever since the commencement of the Russian war, in 1854, the questions involved in the settlement of the army and navy estimates have been too large and important to be disposed of, either by the mere departmental and formal investigation of the Treasury, or between the First Lord of the Admiralty, or War minister, and the Chancellor of the Exchequer individually. They have been such as could only be settled by the Cabinet, assisted by the Chancellor of the Exchequer as a Cabinet minister. Accordingly an early communication takes place between the Chancellor of the Exchequer and these great departmental heads, upon the principal questions which present themselves in the framing of estimates, in order that these questions may be put into shape for the consideration of the Cabinet. This renders the subsequent review of the estimates by the Treasury, in the main, a formal proceeding; and confined to minor particulars. Moreover, the Chancellor of the Exchequer would consider his own responsibility to be chiefly in reference to the principal items; and as to smaller matters, and in all questions of rule, form, and order, he would rely upon the skill and experience of the departmental officers, at any rate for puttinghim in motion.[t]

[t] Rep Com. Pub. Accounts, 1862, Evid. 1487, and see Mr. Gladstone's evid. 1543, &c. Considerable improvements have recently been effected in the framing of the army and navy estimates. But it is impossible to prepare these estimates so as to make them tally very exactly with the subsequent expenditure, so many unforeseen causes derange the calculations upon which they are based. No item, however, is at any time calculated with a view to be in excess of what will be required for a par-

When finally agreed upon, the Civil Service estimates are divided into six classes, for fixed services; with a seventh class, for miscellaneous items of expenditure, of a temporary, special, or supplementary character. The whole of the estimates must be communicated to Parliament early in the session. Full explanatory details are appended to all the printed estimates, to enable members to understand them, and to avoid the necessity for *vivâ voce* explanations in Committee of Supply.[u]

The views entertained by the House of Commons in regard to all matters of detail in the conduct of public affairs, and especially where the expenditure of money is concerned, are treated with increasing deference and respect by the Treasury; and it is the duty of that department to revise the public expenditure in conformity therewith.[v] But it is to be regretted that of late years the House of Commons has shown a disposition to interfere, much more than formerly, with the internal arrangements of the public departments, by calling for information on minute points, and expressing opinions upon matters which are purely administrative. This is a great evil, and one that is difficult to remedy.[w]

The ordinary functions of the Treasury in the disposal of the supplies granted by Parliament for the public service, and the constitutional position which it occupies in the control of the public expenditure, have been fully explained in a former chapter.[x]

Votes of Credit.

When it is necessary to obtain from Parliament a vote of credit for any purpose—as for the prosecution of a war, &c.—the Treasury is responsible for fixing the amount to be applied for, for distributing the vote among the respective departments concerned, and for adjudi-

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ticular service, or for the purpose of meeting the demands of extraneous services. Rep. Com. Pub. Accounts, 1864. Evid. pp. 2, 3, 24, and Appx. No. 4, p. 73.

[u] See *ante*, vol. i. pp. 473, 481. Rep. Com. Misc. Exp. 1860, pp. 27–33. Evid. 932, 985.

[v] *Ibid.* pp. 6, 7.

[w] Rep. Board of Admiralty, 1861. Evid. 2612, 2905.

[x] See *ante*, vol. i. p. 534, &c.

cating upon their several claims to a due proportion thereof.[y]

Superannuations.

The Lords of the Treasury are also entrusted with the grant of all pensions, compensations, and allowances which may be applied for by any clerk or civil officer in the public service, pursuant to the provisions of the Superannuation Acts. Formerly two of the junior lords composed what is termed the Superannuation Committee, and were required to consider and report to the Board upon every application that might be made for a pension or retiring allowance. But it is probable that this duty is now performed by some of the permanent officers of the Treasury. The Superannuation Committee, however, has been recognised by board minutes passed from time to time, and its decisions, and the grounds for the same, are regularly recorded.[z] The statute defines the maximum amount of pension which may be granted, and the conditions of the grant, but with a proviso that no absolute right shall be conferred: hence the importance of the proceedings of this Committee.

Departmental duties of Junior Lords.

Special duties have been, at different times, assigned to the *junior lords*; sometimes in conformity with the provisions of a minute, delegating certain particular duties to particular members of the board, and sometimes pursuant to a mutual understanding between the lords and the secretaries.[a] The duty of examining into the cases of persons imprisoned for breach of the revenue laws is entrusted to a committee of the board, and a record is kept of the proceedings in such cases. This committee, as well as that upon superannuation, requires constant attention, with a view to preserve a consistent code of precedents.[b]

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[y] Rep. Com. Pub. Accounts, 1862. Evid. 2292, Chanc. of the Exchcq. Hans. Deb. vol. clxiv. p. 1491.

[z] Com. Papers, 1847–8, vol. xviii. pt. 1. 142, 165. For an account of the principles which govern the decisions of the Superannuation Committee, see *ibid.* p. 165.

[a] See cases cited, *ibid.* pp. 166, 167, 426.

[b] *Ibid.* 166.

Up to 1848 the number of Junior Lords of the Treasury was four, but a committee of the House of Commons in that year recommended that they should be reduced to three, and that more efficient service should be exacted from them in the superintendence of economy in every branch of the public service. The reduction took place accordingly;[c] but hitherto the latter part of the recommendation has not received due attention. Mr. Canning used to describe the duties of the Junior Lords to consist merely in 'making a House, keeping a House, and cheering the minister.'[d] It is doubtless a part of their duty 'to come down and make a House;' and an arrangement is made amongst all the members of the Government, for some of them to be constantly in attendance in Parliament during session;[e] but the Junior Lords of the Treasury have also, we are assured, abundant employment in their own department, if they are disposed to attend to it. It has been charged against them, however, that, as a body, they are more anxious to give the preference to work which brings them into notice in the House of Commons.[f] An estimate of the importance of the duties which would naturally devolve upon these functionaries—from the increasing interference of the House of Commons in matters of detail, and the necessity for the continual supervision of some member of the Government conversant with every description of parliamentary business, in order to make sure that the business is done in conformity to the views entertained by the House—induced Sir Charles Wood to declare that the reduction of the number of Junior Lords from four to three was a very doubtful advantage.[g]

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[c] Com. Papers, 1847-8, vol. xviii. pt. 1. p. 15, Treasury Minute, Aug. 15, 1848, Act 12 & 13 Vict. c. 89.

[d] Report, Board of Admiralty, 1861, p. 132. But the responsibility of 'making a House' is now understood to belong to the Secretary of the Treasury, who is authorised to send and request members of the Government to quit their offices, and come down to the House, for that purpose, whenever he may consider their presence to be necessary. Hans. Deb. vol. clxxxiii. p. 1314.

[e] Rep. Off. Sal. 1850. Evid, 52, 53.

[f] Rep. on Misc. Exp. 1847-8, p. 423.

[g] Rep. Off. Sal. 1850. Evid. 46, 48.

But this statement was made in 1850. Ten years later, an ex-minister of the crown publicly declared that the Junior Lords of the Treasury had no departmental duties whatever![h]

The Junior Lords in Parliament.

All the Junior Lords are generally, though not invariably, in Parliament, where their presence is found exceedingly serviceable. But it is very difficult to find persons who are willing to run the risk, and incur the expense, of an election contest for the sake of a place of such small emolument and power as a Junior Lordship of the Treasury; accordingly the Government are not unfrequently deprived of the services of one or more of the Junior Lords in the House of Commons.[i] But even when they have seats in Parliament they are not to be considered as officially representing the Treasury; the entire parliamentary responsibility, as has been already stated,[j] rests with the Chancellor of the Exchequer.

They represent the three kingdoms.

In selecting persons to fill the post of junior lord, it is customary to choose one from each of the three kingdoms, with a view to their exercising a general supervision over the Treasury business of their respective countries, which differs in many particulars. Another benefit resulting to the Government from such an arrangement is, that these gentlemen constitute additional channels of communication with the country at large, each with the kingdom they specially represent. They come from time to time, fresh from the ordinary business of English, Scotch, and Irish society, and form very useful vehicles of communication with the Treasury. Numerous applications are made to them on a variety of subjects, and they either get the business transacted for the parties, or else are able to satisfy them that it cannot be done.[k]

Their other services.

The Junior Lords are, furthermore, very useful to the Government in receiving deputations or individuals upon

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[h] Lord Llanover, in Rep. Com. Misc. Exp. 1860. Evid. 1370, &c. 48, 50, 62. And see *ante*, pp. 235, 236.

[i] Rep. Com. Off. Sal. 1850. Evid.

[j] See *ante*, p. 434.

official business; also in serving upon parliamentary committees, to watch their proceedings on behalf of Government, and to afford information thereupon, so as to prevent misapprehension upon important public questions. They afterwards give their assistance in carrying out the recommendations of such committees, so far as they have been sanctioned by the Government.[l]

In short, although, upon the whole, their regular duties may be light and inconsiderable, yet they perform several useful functions, and fulfil an important part in the business of the Treasury.[m] The office, moreover, affords an admirable training for the higher ranks of official service, and several of our most eminent statesmen have commenced their public career in this capacity.[n]

Mr. Gladstone's Ministry, however, which was appointed in December 1868, have determined to turn the Junior Lords of the Treasury to good account. To a 'Third Lord'—who will rank next after the Chancellor of the Exchequer—will be assigned confidential duties as the assistant of that Minister; and other work in connection with the department of receipt, which will relieve the pressure upon the Financial Secretary. It is also intended to appoint an additional Junior Lord, to supervise military expenditure.

Joint Secretaries to the Treasury.

Ever since the year 1714, there have always been two joint principal Secretaries to the Treasury—one of whom is termed the Parliamentary, and the other the Financial Secretary. They are both eligible to sit in the House of Commons, and both retire from office, with the Lords of the Treasury, on a change of ministry. Since 1805, there

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[k] Rep. Misc. Exp. 1847-8, pp. 142, 180. When the Derby Ministry took office, in February 1858, they chose one Irish and two English Lords of the Treasury, but none for Scotland. This occasioned great dissatisfaction, and they were obliged to remedy the grievance early in the following year.—See Com. Journals, vol. cxiii. pp. 73, 74. *Ante*, p. 236.

[l] Rep. Misc. Exp. 1847-8, pp. 422, 430. Rep. Off. Sal. 1850. Evid. 49.

[m] *Ibid.* pp. 142, 143, 418-424. Report on Board of Admiralty, 1861, p. 382. The Act 12 & 13 Vict. c. 89 makes the signature of any two lords sufficient, instead of three, as formerly, to Board warrants and other instruments issued by the Treasury.

[n] Rep. on Off. Sal. 1850. Evid. 2655, 3238. Rep. on Pub. Accounts, 1862. Evid. 1615.

Secretaries of the Treasury.

has also been a permanent under-secretary, who is the official head of the department, and who is ineligible to a seat in Parliament. These three officers receive each 2,000*l.* per annum, an additional 500*l.* per annum being allowed to the permanent secretary after five years' service. There is also an auditor of the civil list and assistant-secretary, who receives 1,500*l.* per annum.[o]

The secretaries assist in the transaction of the business of the Board, and in preparing its decisions upon all matters submitted to it. Through their instrumentality, in fact, the whole Treasury business is conducted, under the direction of the political chiefs, for, as we have seen, the Board has little more than a nominal existence. They are consequently very heavily worked.

All communications between the Treasury and other public departments pass through the hands of a principal secretary, who exercises a delegated authority from the Chancellor of the Exchequer, and is therefore warranted in writing in the name of the Board. Accordingly, in communicating a decision, or minute of the Treasury, the Secretary uses the expression, 'My Lords have directed,' &c.

The Secretaries of the Treasury, as well as the other principal officers of the Board, are in constant communication with the Chancellor of the Exchequer; it is not therefore necessary to trouble him with every detail, unless any question should arise to which his attention had not been directed. By statute, Board warrants require the formal signature of two Lords of the Treasury; but in cases where a warrant is not required, a letter signed by the secretary is legally sufficient.[p]

Parliamentary Secretary.

The parliamentary, or political, Secretary to the Treasury is also known as the 'Patronage' Secretary, because it is through him that the Prime Minister acts in making appointments to subordinate offices.[q]

[o] Thomas, Eng. Exchcq. 142; Civil Service Estimates, 1868-9. Class II. No. 1.

[p] Rep. Com. Pub. Accounts, 1862. Evid. 774, &c. 1468.

[q] See *ante*, vol. i. p. 380.

Whenever the Secretary to the Treasury nominates to an office, he is mainly influenced by political considerations. The candidates are recommended to him by political supporters of the Government. But they always undergo an examination in the office to which they are appointed, and those who do not satisfy the prescribed rules are rejected, and their places supplied by fresh appointments. All promotions are in the power of the particular department, which can likewise dismiss at any time for misconduct. This affords a sufficient security for the efficiency of the permanent civil service.[r]

The political Secretary to the Treasury is a very useful and important functionary. His services are indispensable to the leader of the House of Commons in the control of the House and the management of public business.[s] His influence in strengthening the hands of his party by the distribution of patronage is very great. A number of small situations in the revenue departments, and in other branches of the public service, are in his gift, and are placed by him at the disposal of members of the House for distribution amongst their constituents, generally with a view to promote the interests of the party in power, but without exclusive regard to political preferences.[t] He has also a control over many offices in the civil service, so far at least as the supervision of the Treasury extends. Such offices may be assigned to the jurisdiction of the permanent secretary; but even so, the authority of the political secretary is permanent; and if the former comes to any decision in which the latter does not concur, he is liable to be overruled, and his decision reversed.[u]

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[r] Commons Papers, on the Civil Service, 1854–5, vol. xx. pp. 113, 125. The whole power of promotion in the civil service was surrendered to the permanent heads of departments by Lord Liverpool, 'an act which entitled him to the highest praise.' Mr. Gladstone, Hans. Deb. vol. cxciii. p. 398; and see p. 1082.

[s] See *ante*, p. 324.

[t] Hans. Deb. vol. cxciii. pp. 323, 393, 398. Commons Papers, 1867-8, No 51. *Ante*, vol. i. p. 384. *Post*, p. 485. But it is only nominations of candidates for first appointments, to be subject to passing the usual examination, which are in the hands of members of the House of Commons.

[u] Com. Papers, 1854–5, vol. xx. pp. 270, 294.

The Financial Secretary.

The Financial Secretary is also, as we have seen,[uu] a valuable assistant to the Chancellor of the Exchequer in the House of Commons.

The establishment at the Treasury consists of a numerous staff of clerks of different grades, who are chiefly employed in promulgating and recording decisions of 'the Board.'[v]

Office time-books.

In order to secure a regular attendance of the employés in this department, a time-book is kept of the arrival of the clerks, and at a certain hour a line is drawn across; and every one whose name is not entered before the line is drawn is thereby seen to have come to his duty later than he should have done. A similar rule is established at the War Office, at the Admiralty, and at the Poor Law Board. At the other public departments, the business is of such a nature that regular early attendance is not enforced, but the clerks are often required to remain until a late hour in the evening.[w] At the Colonial Office a periodical report is made to the chief in regard to the attendance of the clerks.

Extra clerks.

And here it may be noticed, that in addition to the ordinary staff of the several departments of state, the exigencies of the public service necessitates the employment of a number of supplemental clerks; and also, from time to time, that 'temporary or extra clerks,' in addition to those on the supplemental list, should be called in. On account of the disadvantages attending this practice, the Lords of the Treasury, in the year 1860, appointed a departmental committee to enquire into the subject, who reported a recommendation that the class of 'supplementary clerks' in the several departments of government should be gradually abolished; and that a central copying-office should be established, under proper control, and attached to the office of the Civil Service Commissioners, to which the several public departments should apply for

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[uu] See *ante*, pp. 363, 366.

[v] See Civil Service Estimates, 1868–9, Class II. No. 1.

[w] Rep. Com. on Official Salaries, 1850. Evid. 1537, 1551, 1915, 2708, 2849, 2878.

whatever assistance they might at any time require, in excess of their ordinary permanent staff: the new department to be organised under the directions of the Treasury. Should this plan be carried out, it is anticipated that the public service will be rendered much more efficient and less expensive than at present.[x]

Solicitor to the Treasury.

One branch of the Treasury establishment is termed the Solicitor's Office. It is presided over by the solicitor and assistant-solicitor to the Treasury, who are barristers, and act as attorneys for the Government. The law business of all the principal public departments, not having their own special solicitor, is referred to the Solicitors to the Treasury.[y]

Offices subordinate to the Treasury.

The following offices are more or less immediately connected with, or subordinate to, the Treasury,[z] viz. :—

The Paymaster-General's Office.
The Exchequer and Audit Department.
The National Debt Office.
The Public Works Loan Office.
The Mint.
The Board of Works.
The Office of Woods, Forests, and Land Revenues.
The General Post Office.
The Customs.
The Inland Revenue Office, and
The Stationery Office.

An account of the routine duties in these offices will be found in Murray's 'Handbook of Church and State,' and in Parkinson's 'Under Government.' Such of them as are presided over by members of the administration, or

[x] See the Report, in Commons Papers, 1865, vol. xxx. p. 219. Judging by the small number of clerks, (viz., four junior and four supplementary clerks) at present attached to the office of this Commission, we may infer that this recommendation has been but partially carried out, as yet.—See Civil Service Estimates, 1868–9, Class II. No. 16.

[y] Murray's Handbook, p. 133.

[z] The Act 56 Geo. III. c. 98, which united the offices of Lord High Treasurers of Great Britain and of Ireland, provided that all officers employed in collecting and managing the public revenue should be 'in all respects subject to the control of such Lord High Treasurer or Commissioners of His Majesty's Treasury.'

are directly responsible to Parliament, will claim attention in this chapter.

1. *The Paymaster-General's Office.*

The Pay Office.

This office was originally a branch of the military establishment, and was presided over by a political head, who was designated the Paymaster of the Forces. In 1834, the Act 4 William IV. c. 15, under which the Exchequer Office was re-organised, removed from the Exchequer all payments which had been previously made in detail in that office, and authorised the appointment by the Treasury of a Paymaster-General.[z] In 1836, pursuant to the Act 5 and 6 William IV. c. 35, the Army and Navy Pay Offices were amalgamated, under the title of the Paymaster-General's Office. Subsequently, under the statute 11 and 12 Vict. c. 55, the offices of Paymaster of Exchequer Bills and Paymaster of Civil Services were merged into this department. The duties appertaining to this office consist in the payment of all voted services and other charges connected with the naval, military, and civil expenditure, according as credits are given, from time to time, upon the public moneys in the Bank of England, by the Comptroller-General of the Exchequer, pursuant to applications from the Treasury.

The Pay Office has also charge, by way of deposit, of large sums of money from various public departments, which do not strictly form part of the public revenue, but which have accrued under the authority of permanent Acts, and are placed in the hands of the Paymaster-General as the banker of the said departments, and are entered by him in his cash account, as distinguished from his Exchequer receipts.

It is the practice of this office to make use of all funds paid into the same, from whatever source derived, whether as deposits or Exchequer receipts—unless they should

[z] See Treasury Minute of August 4, 1858, in Commons Papers, 1860, vol. xxxix. pt. i. p. 188.

have been invested in Exchequer bills, and thus withdrawn from the floating balance in hand—as one cash balance, out of which all lawful payments are indiscriminately defrayed. This practice has been formally sanctioned by the Committee on Public Moneys of 1857, and by the Public Accounts Committee of 1863. Otherwise it would require that an immense number of separate accounts should be kept standing for different objects, which would involve the existence of an exceedingly complex and embarrassing system, and occasion a heavy pecuniary loss, by having useless balances lying at the Bank of England.[a]

There is no uniform system in regard to the mode of applying to the Paymaster-General for moneys required for the different branches of the public service, but the naval, military, and civil departments have each their own rules on this subject. The principal security against fraud or negligence in issuing orders, or drawing cheques upon the Paymaster-General, by any department, consists in the use of a counter-signature.[b]

The particular duties which devolve upon the Paymaster-General, under the Exchequer and Audit Departments Act of 1866, are described in a Treasury Minute, dated March 2, 1867.[c]

The Public Moneys Committee of 1857 advised that there should be a daily revision of the accounts of the Pay Office by an officer of the Board of Audit—a suggestion which was reiterated by the Public Accounts Committee of 1863, in their second report. The Treasury, however, consider that such a regulation would be impracticable and unnecessary, inasmuch as the said accounts have for the most part been already subjected to the scrutiny of the Audit Office, in the department from whence the orders for payment emanated.[d]

The Paymaster-General himself, ever since the creation

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[a] Rep. Com. Pub. Moneys, p. 45. Second Rep. Com. of Pub. Accounts, 1863, Evid. pp. 13, 15.

[b] Chanc. of Exchcq. in Hans. Deb. vol. clxxx. p. 623.

[c] Commons Papers, 1867, No 111.

[d] Rep. Com. Pub. Accounts, 1864, Appx. No 4.

The Paymaster General.

of the office in 1836, has been charged with merely nominal duties. On his first appointment, he grants powers of attorney to certain officers to act for him, in supplying the accounts opened at the Bank of England in his name with funds, and in drawing upon those accounts for the payment of public services. He never interferes in the details of business, or signs anything except the receipt of Exchequer bills, a duty which the Comptroller of the Exchequer has required him to perform.[e] The Committee on Public Moneys, in 1857, recommended that the Paymaster-General should cease to be a political officer, discharging his duties by deputy, and should become the acting and efficient head of the Pay Office. But the Treasury were unwilling to incur the inconvenience of any change in the existing arrangements.[f]

Pursuant to a recommendation of the Committee on Miscellaneous Expenditure, in 1848, it has been usual to associate the office of Paymaster-General with that of some other necessary office of honour and trust of a similar tenure, but the duties of which are also light. Until the abolition, in 1867, of the Vice-Presidentship of the Board of Trade, this office was held conjointly with that of Paymaster-General. But hereafter it is proposed to confer the latter appointment upon the Judge Advocate-General. By this arrangement a considerable saving is effected, as but one salary (viz., 2,000*l.* per annum) is voted for the incumbent of the two offices.[f]

The Paymaster-General has frequently, though not invariably, a seat in the Cabinet, where he is able to be of considerable service to such of his colleagues as fill the more onerous and laborious offices of state.[g]

The labour and responsibility of superintending the business of the Pay Office devolves upon the Assistant Paymaster-General, to whom the necessary powers are

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[e] Second Rep. Com. Pub. Accounts, 1863, p. 14.

[f] Treasury Minute, December 23, 1858. Commons Papers, 1860, vol. xxxix. pt. i. p. 176.

[f] Commons Papers, 1847–8, vol. xviii. pt. 1, p. xvii. Rep. Com. Pub. Moneys, p. 44.

[g] See *ante*, p. 169.

delegated, and who receives a maximum salary of 1,200*l.* a-year.[h]

2. *The Exchequer and Audit Department.*

Reference has been made, in a former chapter, to the functions appertaining to Her Majesty's Exchequer, in exercising a check upon the illegal application of any portion of the public income; and to the Act passed in the year 1866 for consolidating the duties of the Exchequer and Audit departments, and to provide for the more effectual audit of the public accounts.[i]

Audit of public accounts.

Previous to the year 1785, the audit of the public accounts of Great Britain was entrusted to two patent officers, styled Auditors of the Imprest. All public officers to whom money was issued from the Exchequer by way of advance, or imprest, were required to transmit to these auditors their accounts in relation to the same. But, though highly paid, the services of these functionaries were most inefficient. The accounts became involved in the greatest confusion, and their audit fell into arrear to the extent of 534 million pounds! In order to put an end to this scandal, and in compliance with the recommendation of the Commissioners of Public Accounts in their thirteenth report, Parliament directed the patent of the Auditors of Imprests to be revoked (the liberal allowance of 7,000*l.* per annum being granted to each of them for life, as a compensation for the loss of office), and a Board of Audit to be established.[j] By subsequent enactments, the powers of the Board of Audit were considerably enlarged, and it continued for sixty years to perform the duties assigned to it.[k]

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[h] Rep. Com. Pub. Accounts, 1862. Evid. pp. 208, 209; Hans. Deb. vol. clxiv. p. 557. Civil Service Estimates, 1867–8, Class II. p. 14. For an account of the routine of business at the Pay Office, see the Shilling Magazine, vol. iv. p. 50.

[i] See *ante*, vol. i. pp. 535-539, 573.

[j] By the Act 25 Geo. III. c. 52. Correspondence, &c. relating to the Exchequ. and Audit Act, 1866, Commons Papers, 1867, vol. xxxix. pp. 183, 199.

[k] 45 Geo. III. c. 91, 46 Geo. III. c. 141, &c. Rep. Com. on Public Moneys, 1857.

No imputation appears to have been made upon the efficiency of this Board, or upon its method of transacting business. Nevertheless, the result of an enquiry into the general question of the control of the public revenues and the accountability of the several departments of expenditure, which was instituted by the Select Committee of the House of Commons on Public Moneys in 1857, proved the inadequacy of the system of audit hitherto generally applied to meet the requirements of Parliament, and the necessity for the universal application of the new principle of the Appropriation Audit (introduced by Sir James Graham in 1832), to enable the Board to co-operate effectually with the House of Commons in detecting any instances of misappropriation of parliamentary grants. The closest attention of Government, and particularly of the Treasury and other financial departments, and also of the Committee of Public Accounts, was devoted to this subject, at different periods, from 1857 until 1866, when the Act above mentioned was passed, uniting the hitherto independent offices of the Exchequer and the Board of Audit, and providing for the extension of the Appropriation Audit to all the moneys voted by Parliament.[1]

Reform of Audit Office.

This statute is, in its main provisions, the legal embodiment of the recommendations of the Public Moneys Committee of 1857, thus tardily but fully matured; and it is destined to effect one of the most important departmental changes which have been sanctioned by Parliament of late years.[m] 'From the period of the extinction, in 1785, of the insufficient audit of the public expenditure by the Auditors of Imprest, up to the present time, and during the whole existence of the Board of Audit, the audit check has never taken up the broken thread of Exchequer control; nor, except to the limited extent of the Appropriation Audit, hitherto in operation, has Par-

[1] 29 and 30 Vict. c. 39; *ante*, vol. i. p. 574.

[m] Corresp. &c. Excheq. and Audit Act, Com. Papers, 1867 (vol. xxxix.), pp. 15, 16.

liament or the public ever been informed how the public money has been applied in accordance with the trust conveyed by the Exchequer issues. The union of the two departments for the first time provides the means of securing a continuous check and control over every transaction connected with the public moneys, from their original collection, in all the various channels, from the public, to their concentration at the Exchequer account at the Bank of England, and their dispersion to the great public accountants and others, by issues from the Exchequer, constituting by law the public expenditure, up to the final examination of the purposes to which the moneys so issued have been actually applied. All the results of this continuous control by the consolidated departments are now to be reported and certified to Parliament and to the public.'[n]

'The head of the Audit department is now for the first time directly recognised as a functionary of the House of Commons, charged with the duties of control over the application of the public moneys by the Executive Government, and a latitude is afforded to him in reporting his opinions to Parliament, such as had not been previously accorded to the Board of Audit. The Auditor-General, moreover, is thereby brought into immediate relations with the Committee of Public Accounts, and is enabled to explain in detail every particular connected with the appropriation of the public grants upon which he may think it desirable that Parliament should have further information.'[o] Satisfied with the provisions of the Exchequer and Audit Act as they have passed the legislature, the newly-appointed Comptroller and Auditor-General predicts that 'the measure, when fairly tested, will prove a complete success.'[p]

But this great departmental reform was not effected without strenuous opposition from influential and experienced

[n] Sir W. Dunbar, Comptroller and Auditor-General, *ibid.* pp. 36, 37.

[o] *Ibid.* p. 43.

[p] *Ibid.* p. 48.

officers heretofore connected with the Board of Audit, or without the occurrence of much dispute and controversy in regard to the relative position and duties of the principal officers created by the Act. Mr. Romilly, the ex-Chairman of the Board, who had been one of the Commissioners for auditing the Public Accounts for nearly thirty years, addressed a letter to the Chancellor of the Exchequer in the autumn of 1866, remonstrating against certain prominent features in the new Act.[q] And as soon as the Bill had passed both Houses, Mr. C. Z. Macaulay, who had acquired a high reputation for zeal and ability as Secretary of the Board of Audit for eleven years, and who had been promoted to be a Commissioner of the Board a few months previously, wrote to the Treasury condemning the position assigned to 'the Assistant Comptroller and Auditor' under the statute. It had been the intention of Government to have selected Mr. Macaulay to fill this office; but as he entertained opinions upon the scope of the duties which would devolve upon him in that capacity, entirely at variance with those of the Treasury, and, as the Lords of the Treasury believed, with the intention of Parliament, they were compelled to decide that it would not be for the public interest to appoint him the Assistant Comptroller and Auditor. The office was accordingly conferred upon Mr. Anderson, a gentleman of great knowledge and experience in the financial department of the Treasury.[r]

Both Mr. Romilly and Mr. Macaulay agreed in thinking that the inferior position assigned by the Act of 1866 to the Assistant Comptroller and Auditor was incompatible with his standing as a patent officer, and at variance with the principle upon which the Act was originally framed. Other objections were expressed by Mr. Romilly, particularly as to the union of the Executive and Audit departments, to the substitution of one responsible head for

[q] This letter was published as a pamphlet by Ridgway, London, 1867; it is also reprinted *ibid.* pp. 21–36.

[r] *Ibid.* pp. 18, 19, 49.

an Audit Board of co-ordinate Commissioners, and to the supposed subordination of the consolidated office to the authority of the Treasury. These will be briefly considered, as explanations upon these points will enable us to understand the nature and extent of the powers vested in the new department. But first it will be desirable to define the position and functions of the presiding officers, under the statute, as the same has been interpreted by the Treasury.

Comptroller and Auditor-General.

At any time within one year, from April 1, 1867, the two offices of Comptroller-General of the Exchequer and of Chairman of the Board of Audit were authorised by the said Act to be united together, and a 'Comptroller and Auditor-General' appointed, with a salary of 2,000*l.* per annum. The Act also directs the appointment of an 'Assistant Comptroller and Auditor,' with a salary of 1,500*l.* per annum. On March 15, 1867, Sir William Dunbar was appointed Comptroller-General of the Exchequer and Auditor-General of the Public Accounts; and W. G. Anderson, Esq., Assistant Comptroller and Auditor. The tenure of both these offices is that of good behaviour, they being removable only upon an address from the two Houses of Parliament. They are forbidden to hold any other office under the crown, and may not be members of either House of Parliament.[s]

Assistant Comptroller.

In the absence of the Comptroller, the Assistant Comptroller is empowered to do anything which may be done by his superior officer, 'except the certifying and reporting on accounts for the House of Commons;' wherefore it was deemed imperative that a functionary who might be called upon to act judicially, and to control the acts of the Executive Government, should have the independence afforded by a tenure equal to that of his own official chief.[t] But the Comptroller and Auditor-General alone is authorised to certify, report upon, and sign the appro-

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[s] 29 & 30 Vict. c. 39, secs. 3, 4. See *ante*, p. 265.

[t] Corresp. Exch. and Aud. Act., Com. Pap. 1867 (vol. xxxix.), p. 13.

priation accounts, and transmit them to the Treasury, to be laid before the House of Commons.[u]

It must not be supposed, however, that the Assistant Comptroller has no other legal duties but such as are representative, and which devolve upon him only in the absence of his principal. The Treasury understand that he should also perform, as his designation shows, the duties of an assistant. By the ninth section of the Exchequer and Audit Act, it is provided that 'the Comptroller and Auditor-General shall have full power to make from time to time orders and rules for the conduct of the internal business of his department.' This power was evidently intended to include the duties of the Assistant Comptroller, and therefore rendered it needless, even had it been practicable, to define them more particularly in the Act.[v] 'Subordinate in grade to the Comptroller and Auditor-General only, so that he may not unduly trench upon the independence and authority of the officer primarily responsible for everything done in the department,' the office and functions of the assistant are equally independent and authoritative, and his opinions and judgment entitled to respect. In a limited sense, he shares the responsibility of his principal to Parliament, and is free to appeal to the Committee of Public Accounts against that officer, should his conduct be such as to justify complaint.[w]

The ground upon which it was assumed by Messrs. Romilly and Macaulay that the Assistant Comptroller had been placed in an inconsistent and degraded position by the Act from that which was at first assigned to him, was the striking out, by the House of Commons, of a provision inserted in the Bill by the Committee of Public Accounts, which empowered the Assistant Comptroller to report, jointly with the Comptroller, on the appropriation of the parliamentary grants, and to certify, with him,

[u] 29 & 30 Vict. c. 39, secs. 7, 22.
[v] Corresp. &c. Exch. and Aud. Act, Com. Papers, 1867, No. 97, p. 12.
[w] *Ibid.* pp. 14, 16, 41, 44.

certain public accounts. But 'the Bill, as originally introduced, and as finally sanctioned, was, in regard to the position of the Assistant Comptroller, substantially and almost identically the same measure.' The Bill as introduced, and as it finally passed through the select committee and through Parliament, assigned to the Comptroller and Auditor-General the sole power of examining and deciding all questions from time to time arising out of the accounts submitted to him; and this function was entrusted to him alone, and only in his absence to the assistant officer. The mere reporting upon or certifying accounts previously examined is evidently more an executive than a judicial act. And the committee were willing to allow the assistant to participate therein. But upon its being shown to them that this was a departure from the principle of individual responsibility, which had been advised by the government, and approved of by the committee, the chairman of the committee agreed with the House in the alteration of the Bill, so as to deprive the assistant officer of all such powers, and to confine his independent authority to the representation of the Auditor-General in his absence. It was moreover decided that no one but the Auditor-General himself should be competent to report to the House of Commons.[x]

Impugning the wisdom of Parliament in subordinating the Assistant Comptroller to the principal officer, while conferring a patent office upon each alike, Messrs. Romilly and Macaulay endeavoured to prove that the independence and utility of this great department must materially suffer from such an arrangement.[y] But their arguments were ably met and satisfactorily refuted by Sir William Dunbar, the newly-appointed Comptroller and Auditor-General.[z]

Placed in a position of complete independence of the executive government, and responsible to Parliament

[x] Corresp. &c., Ex. & Aud. Act., Com. Papers, 1867, No. 97, pp. 8, 10, 12.

[y] *Ibid.* pp. 4, 30, 34.

[z] *Ibid.* pp. 8–14, 40–45.

alone, the Comptroller and Auditor-General may well be trusted to discharge his functions with impartiality and fidelity. Under any circumstances, the great security for the faithful performance of his onerous duties is this, that he will be amenable to public opinion, and to the supervision of the Public Accounts Committee, healthier restraints, if such were needed, than any check that could be established in his own office upon the performance of his arduous and invidious labours.[a]

Constitution of Audit department.

There is more plausibility in the objections urged by Mr. Romilly to the union of the hitherto distinct departments of the Exchequer and the Board of Audit, and to the substitution of one responsible head, in the examination and audit of the public accounts, for a Board of co-ordinate and independent commissioners.[b]

But the consolidation of these important offices was not agreed upon without the most anxious consideration and discussion, 'and at no stage of the proposed Bill was any point of importance finally settled without the knowledge of the representatives of the two departments, and, indeed, the acquiescence of the Board of Audit itself.'[c] This great change of system was, as we have seen, recommended to Parliament by high authority so far back as 1857; and it is but the carrying out of the principle of concentrated individual responsibility for acts of administration which meets with such general acceptance at the present day.[d]

Much undoubtedly may be said in favour of the administration of the Audit department by a Board composed of an equal number of co-ordinate members, not less than four, the chairman having a second or casting vote. But for several months, if not years, previous to the abolition of the Board of Audit a gradual change of practice had been introduced whereby the work was

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[a] Corresp. &c. Excheq. and Audit Act, Com. Papers, 1867, No. 97. (in vol. xxxix.) pp. 11, 17.

[b] *Ibid.* pp. 23–26.

[c] *Ibid.* p. 7.

[d] *Ante*, p. 181; and vol. i. p. 537.

divided between single commissioners, and only difficult and unusual cases brought up to the Board, collectively. Latterly, indeed, discussions at the Board were 'reduced to a minimum.'[e]

'The main object of substituting for the Board of Audit a single chief with supreme authority in the department is to fix the whole responsibility of the due execution of all the duties upon one public officer. It tends also to insure definite and uniform decisions on questions requiring them, nor is the advantage really lost of that deliberative and collective judgment which is considered to be afforded by a Board consisting of several members. In his decisions as the responsible chief of a great public department, the Comptroller and Auditor-General must be held to express not merely his own individual and unaided judgment, but the well-considered and matured opinions of the department which he represents, including the Assistant Comptroller and Auditor and all the most experienced officers under him. These decisions are recorded in the books of the office, and are consequently known to the whole establishment, who constitute a sufficiently numerous and influential body to counteract any personal leaning which might possibly exist in the mind of the chief, and bias his judgment.'[f]

Its special duties.

It is the duty of the Audit office 'to ascertain facts, to make them known to those whom they concern, and who are in a position to deal with them; to sift the pecuniary transactions of the several public accountants of the kingdom, to investigate the real nature of those transactions, to classify them, to consider the legal and financial questions arising out of them, to distinguish between what requires notice and what does not, and to lay before the House of Commons and the executive the results of its deliberations.'[g]

Wherefore, the practice of the office in the examination

[e] Corresp. Exchcq. and Audit Act, Com. Papers, 1867, No. 97, pp. 39–42.

[f] *Ibid.* pp. 9, 10.

[g] *Ibid.* p. 23.

of accounts submitted to them has been as follows: Each account, when received, is placed in the hands of an inspector, whose duty it is to take a general view thereof, to satisfy himself of its substantial accuracy. It is then referred for examination to one or more examiners, who are bound by rules specially prepared for their guidance to take note of all irregularities, and to bring them under the notice of the inspector. All questions of a minor character are disposed of by the inspector (with whom, in fact, it rests to judge how far they are so, and what items he shall pass and allow), and those only of a more important nature, and involving a decision by a superior authority, are brought before the commissioner under whom the inspector works. With very few exceptions these questions are finally decided by the commissioner, and such alone are referred for decision to the Board as may appear to him to require their deliberate attention.[h]

It is worthy of notice, that while apparently a new and untried system was introduced by the Exchequer and Audit Departments Act, so far as the business of the Audit Office is concerned, the Act is to a great extent an embodiment of the existing practice. The business, we are assured, will continue to be conducted as heretofore, with this difference only, that references or appeals on difficult questions, when they arise, will be decided by a single responsible chief, instead of by the majority of a Board of four members, or by the casting vote of the chairman. A special share of the work will, moreover, be assigned to the Assistant Comptroller, in lieu of that heretofore entrusted to one of the commissioners.[i]

The Audit Office in relation to the Treasury.

We have now to consider Mr. Romilly's complaint that under the new Act the Comptroller and Auditor-General is 'virtually the servant of the Treasury.'[j] It is true that in the new forms of procedure authorised by the Act, the Treasury is, in some cases, substituted for the Ex-

[h] Corresp. &c. Exch. and Aud. Act, Com. Papers, 1867, No. 97, pp. 38, 39.

[i] *Ibid.* pp. 40, 46.

[j] *Ibid.* pp. 28, 29.

chequer, or the Privy Seal Office, in the issue of formal orders for giving effect to parliamentary grants.[k] But it is equally true that the substantial powers of the Treasury over the Audit department are materially diminished by this statute.

For example, the Treasury can no longer prescribe rules for the conduct of the internal management of the Audit Office. This power is now vested in the Auditor-General. The necessity for the sanction of the Treasury for the promotion, suspension, or dismissal of Audit officers is now dispensed with, and the Auditor-General is constituted the supreme head of his department. The subordinate officers are thereby secured against any arbitrary interference of the executive government; their salaries are fixed by Order in Council, and their position made entirely dependent upon their conduct and efficiency.[l]

Annual reports to House of Commons.

The 21st section of the Act provides that the reports of the Comptroller and Auditor-General on the Appropriation Accounts shall be annually sent to the Treasury at a stated period before the meeting of Parliament for presentation to the House of Commons. 'This provision was inserted with the object of enabling the Treasury, on the part of the executive government, to obtain such explanations from the several departments as might appear to be required, and to accompany the reports with such observations as they might think fit to offer thereon: thus supplying the House of Commons with additional information in reference to the appropriation of the public grants.'[m] And the Treasury merely act ministerially in transmitting such reports to the House: if they should not communicate them within the time prescribed, the Comptroller and Auditor-General is empowered, by

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[k] See *ante*, vol. i. pp. 540–543.

[l] Corresp. Exch. and Audit Act Com. Papers, 1867, No. 97, pp. 42, 44. Other instances of exemption from Treasury control are mentioned at p. 42.

[m] *Ibid.* p. 10.

the 32nd section, forthwith to present any such report himself.

The particulars to be embraced in the Comptroller's reports to the House of Commons are enumerated in the 32nd clause as follows:—He shall call attention to every case in which it may appear to him that a grant has been exceeded; or that money received by a department from other sources than the grants for the year to which the account relates has not been applied or accounted for according to the directions of Parliament; or that a sum charged against a grant is not supported by proof of payment; or that a payment so charged did not occur within the period of the account, or was for any other reason not properly chargeable against the grant.

Thus far our attention has been mainly directed to a consideration of the duties of the Exchequer and Audit department so far as the Audit branch is concerned. Its Exchequer functions need not be here enlarged upon, as they have been already explained in a former chapter.[n] It will suffice to say that the ancient authority of the Exchequer—in the receipt and custody of the entire public revenue, and in restricting issues therefrom to such purposes only as have been sanctioned by Parliament—remains unimpaired; although a simpler machinery has been substituted for the cumbrous process hitherto in use in order to give effect to a grant of supply by Parliament.[o]

Exchequer functions.

If any question should arise between the Exchequer and the Treasury upon which the Comptroller and Auditor-General, before executing any direction of the Treasury for the issue of public money, may need aid or counsel to guide his opinions and strengthen his judgment, he is at liberty to follow the practice of his predecessors at the head of the Exchequer, and obtain the

[n] See *ante*, vol. i. pp. 536–542.

[o] The new Forms enjoined under the Act of 1866 are appended to the Treasury Minute of March 2, 1867, for carrying the Act into effect. Commons Papers, 1867, vol. xxxix. p. 337.

opinion of the law officers of the crown to assist him in determining any difficult point of law that may be involved in the application.[p]

Efficiency of new system.

But, after all, the position of independence given to the Comptroller and Auditor-General by the Act of 1866, and his direct accountability to Parliament alone for his official conduct, furnishes both Parliament and the public with more ample securities and safeguards for a thorough and impartial examination and audit of the public accounts, as well as for a more complete and efficient check and control over the public expenditure, than have ever heretofore existed.[q]

Exchequer Bills.

By the Act 29 Vict. c. 25, to consolidate and amend the laws regulating the preparation, issue, and payment of Exchequer bills and bonds, all such bills are directed to be prepared at the Bank of England, and issued upon the joint authority of the Treasury and the Comptroller and Auditor-General, and to be signed by the Comptroller or Assistant Comptroller.[r]

Organisation of department.

As we have already remarked, the Exchequer and Audit Departments Consolidation Act went into operation on April 1, 1867. The first step taken in the organisation of the new department was to assign to the immediate direction of the Assistant Comptroller and Auditor the duties heretofore appertaining to the Exchequer office. Soon afterwards, the Comptroller and Auditor-General issued a minute detailing the permanent arrangements to be adopted in his office for giving effect to the Act

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[p] Corresp. Exch. and Audit Act, Com. Papers, 1867, No. 97, pp. 13, 42. It has also been suggested by Sir William Dunbar, that the Comptroller and Auditor-General should be empowered to confer with a Council, to consist of the Speaker of the House of Commons, a Baron of the Exchequer, an Equity Judge, and the Deputy-Speaker. This would prevent any question as to his ability to resist any pressure that might be brought to bear upon him by the Treasury, or other great public departments, in the discharge of his important functions, and would give confidence to Parliament and to the public that the great object of establishing an effectual check and control over the public expenditure would be fully accomplished. *Ibid.* p. 42.

[q] *Ibid.* p. 47, and see Hans. Deb. vol. clxxxvii. p. 856.

[r] See Treasury Minute of March 9, 1867, to give effect to the Exchequer Bills Act. Commons Papers, 1867, vol. xxxix. p. 413.

aforesaid; and directing certain books to be kept, and forms observed, for the purpose of insuring that the issues of public money from day to day should be in strict conformity with the provisions of the several Acts of Parliament authorising such appropriation and expenditure.[s]

In administering his department the Comptroller is assisted by a secretary, thirteen inspectors, thirty-four senior examiners of accounts, and sixty-seven junior examiners, by whom all the business will be prepared for the eye of the chief. These officers were appointed in the first instance by the Treasury, upon the issue of an Order in Council regulating the new department, and fixing the amount of salaries to be paid therein; but afterwards they will be amenable only to the Comptroller and Auditor-General.[t]

The department of Exchequer and Audit is represented in the House of Commons by the Lords of the Treasury.[u]

Irish and Scotch expenditure.

Provision has also been made to bring the expenditure for civil services in Ireland and in Scotland (as administered through the Irish Board of Works, and the office of the Queen's and Lord Treasurer's Remembrancer in Scotland[v]) under the more immediate control of the Treasury, and in subjection to the improved regulations which are now applied to civil service expenditure in England under the Exchequer and Audit Departments Act.[w]

New system of accounts.

Pursuant to the 23rd section of the Act of 1866, a royal commission was appointed in 1868 to frame an 'entirely new system of accounts and audit' to be applied to all the departments of Her Majesty's service. It consists of two commissioners, one of whom is unpaid.[x]

On May 12, 1868, Mr. Dillwyn moved, in the House of Commons, to resolve 'that those who conduct the audit of public accounts on

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[s] Minutes, &c. issued under the Excheq. and Audit Depts. Act, Com. Papers, 1867, vol. xxxix. p. 357.

[t] Corresp. E. & A. Act. *Ibid.* 1867, No. 97, pp. 28, 42, 44. 29 & 30 Vict. c. 39, secs. 8, 9. Civil Service Estimates, 1868-9, Class II. No. 17.

[u] Hans. Deb. vol. clxxxii. p. 1864.

[v] See the nature of these services, Civil Service Estimates, 1868-9, Class II. Nos. 10, 12; & *post*, p. 713.

[w] Minutes, &c. Commons Papers, 1867, vol. xxxix. pp. 374–411.

[x] Civil Service Estimates, 1868-9, Class VII. p. 8.

behalf of the House of Commons ought to be independent of the Executive Government, and directly responsible to this House; and that inasmuch as the appointment, salaries, and pensions of the officers entrusted with the conduct of such audit are more or less under the control of the Treasury, the present system is one which imperatively calls for revision.' The friends of this motion urged that the new Act left too much room for Treasury interference with the Audit Office, and did not sufficiently facilitate the conduct of business in that department. In reply it was stated that so far as the Act had been tried it had worked well: that whereas several years used formerly to elapse before the application of the sums voted by Parliament could be entirely tested, now it might almost be said that during one session the expenditure of the previous session was thoroughly audited and laid before the House.[x] This point has been steadily aimed at, although 'three or four years will probably elapse before the system gets into perfect working order.' The debate was closed by Mr. Gladstone, who advised Mr. Dillwyn not to press his motion to a division; whereupon it was withdrawn.[y] Further reforms proposed.

3. *The Mint.*

The Mastership of the Mint was formerly a political office, and was frequently held in conjunction with some other appointment.[z] But pursuant to the recommendation of a Royal Commission on the Constitution and Management of the Royal Mint, in 1849[a]—which was endorsed by the Commons' Committee on Official Salaries, in 1850[b]—the department was reorganised, and placed under a permanent head.[c] The Mint.

4. *The Office of Works and Public Buildings.*

The public works and buildings of Great Britain were, for the first time, placed under the management and control of a responsible minister of the crown in 1832, when they were assigned to the charge of the Commissioners of Woods and Forests. But under this arrangement the very objectionable practice was introduced, of using balances of the land revenues of the crown to defray expenses Office of Works, &c.

[x] Hans. Deb. vol. cxcii. p. 123.
[y] *Ibid.* pp. 116–136.
[z] *Ibid.* vol. cxvi. p. 542; *ante*, p. 161.
[a] Commons Papers, 1849, vol. xxviii. p. 347.
[b] *Ibid.* 1850, vol. xv. p. 179.
[c] For particulars see Civil Service Estimates, 1868-9, Class II. No. 21.

connected with public parks or buildings. Wherefore, in 1851, Parliament directed that the land revenues should be kept apart, and that the cost of erecting or maintaining public buildings should be met by votes in Committee of Supply.[d] And in order to prevent the recurrence of this evil, the departments of Woods and Forests, and of Public Works, were again separated by the Act 14 and 15 Vict. c. 42, which created a Board, under the name of the Office of Her Majesty's Works and Public Buildings.[e]

Constitution of the Board.

The Board consists of a First Commissioner, and of the following *ex-officio* members, namely:—the Principal Secretaries of State, and the President of the Board of Trade. The First Commissioner has power to act alone; and, in point of fact, the other Commissioners never take part in the proceedings, except in cases of absolute necessity, when the office of First Commissioner is vacant. Though the Board has a nominal existence, the department is practically in charge of one responsible head, who is subject to the direction and control of the Treasury.[f]

The Chief Commissioner is always a Privy Councillor, and since 1823 has frequently had a seat in the Cabinet.

Its duties.

The Board has the custody and supervision of the royal palaces[g] and parks,[h] and of all public buildings not specially assigned to the care of other departments, whether the same are appropriated for government offices, for national collections, or for the recreation and enjoyment of the public. It has also the administration of

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[d] Hans. Deb. vol. clxxi. p. 377.

[e] See May, Const. Hist. vol. i. p. 213.

[f] Rep. Com. Misc. Expend. 1860. (vol. ix.) Evid. 851–855, 1090. Hans. Deb. vol. clxxi. p. 415.

[g] See Mr. Disraeli's (Chanc. of Exchequ.) remarks as to the need there is for an additional royal palace, which shall be capable of affording suitable accommodation for the reception of royal guests; and the discussion thereon. Hans. Deb. vol. clxxxviii. pp. 1681–1690; vol. clxxxix. p. 1252.

[h] The parks are crown property, but are thrown open to the public under certain regulations, which are enforced by the Commissioner of Police, acting under instructions from the Home Secretary. Hans. Deb. vol. clxxv. p. 774.

moneys voted by Parliament for the erection and maintenance of all such works.

The buildings in charge of the Board include the royal palaces and the Tower of London, Hampton Court and gardens, and the following parks, viz. :—Richmond, Hyde, Green, St. James's, Regent's, Victoria, Kensington, and Battersea, all of which are in or near London; also the public parks and royal gardens in other parts of the United Kingdom; also the Houses of Parliament, Westminster and Chelsea bridges, together with the multifarious arrangements and responsibilities connected with the great Metropolitan improvements which were commenced in 1813 upon land belonging to the crown, or which had been purchased by Parliament for public improvements.

The Board is also charged with the maintenance and repair of the roads and other public works at Holyhead, on the coast of Wales, which were undertaken by government principally for the purpose of facilitating the direct postal communication between England and Ireland. The probate registry offices, and the buildings in which the post offices throughout the kingdom are held, have also been recently placed under the supervision of the Board. As a rule, all works undertaken at the public expense, and not specially given in charge of other departments, are under the direction of the Board; but the exceptions are so very numerous, that it may be said that in point of fact 'the mass of the public works in England, are not under the control of the Board.'[1] For example, the buildings which are subject to the supervision of the Home Office, such as prisons, police courts, county courts, and hospitals, although their cost is defrayed out of public funds, are erected and maintained

[1] Rep. Misc. Exp. Com. Pap. 1860. vol. ix. Evid. 1968. See a debate on a proposal for the reorganisation of the Board of Works in charge of a responsible minister, under whose control all the public works of the country, for which votes were passed in the House of Commons, should be placed, and who should be assisted by a permanent council of three or four practical men. Hans. Deb. vol. clxxii. p. 577.

without any reference to the Board of Works. In like manner also, the British Museum, the Admiralty (as regards harbours, docks, coast-guard houses, &c.), the War Office (for barracks), the Inland Revenue and Customs departments (for custom-houses, &c.), have the exclusive control of their own public buildings. Railways, and in part lighthouses, are under the supervision of the Board of Trade. Other lighthouses are under the control of special commissions.[j] Moreover, it must be remembered that in Great Britain the construction of roads, railways, bridges, canals, and similar undertakings, is generally effected by private enterprise. But as regards works executed at the public expense, it has been considered by eminent authorities that all public works throughout the kingdom (except those undertaken for purposes of naval or military defence) ought to be placed under the management of this Board. The committee of the House of Commons on Miscellaneous Expenditure, in 1860, reported an opinion to this effect, provided, however, the government should carry out another of their recommendations, to wit, that the office of First Commissioner be made non-political and permanent, which, in consideration of the duties and requirements of the office, and the evils arising from frequent changes therein, they considered to be most desirable.[k] But in reply to an enquiry on this point in the House of Commons on May 13, 1862, Lord Palmerston stated that the government had no intention of carrying out this recommendation, as it would withdraw from responsibility in that House the chief direction of the works on public buildings, and would also withdraw therefrom the direct constitutional control over a large amount of public expenditure.[l]

Proposal to make the office non-political.

On June 5, 1863, a motion in favour of the appointment of a permanent Commissioner of Public Works and Buildings was submitted to the House of Commons, but was strenuously opposed by

[j] Hans. Deb. vol. clxxi. p. 206. 476, 603.
[k] Com. Papers, 1860, vol. ix. pp. [l] Hans. Deb. vol. clxvi. p. 1616.

government, and, after a short debate, was withdrawn.[m] A motion to a similar effect was proposed and negatived on July 7, 1863. On June 5, 1866, a member of the House of Commons moved for an address to the Queen, praying the appointment of a royal commission to enquire into the constitution of the Metropolitan Board of Works, the Office of Public Works, and the Office of Woods and Forests, with a view to the better improvement of the metropolis; but after a short debate the motion was withdrawn.

Local taxation of public property.

And here it may be remarked that the government have, until lately, claimed the privilege of occupying houses, premises, and lands, without being subjected to any rates for local purposes, such as poor-rates, land-tax, water-rates, &c. This has operated prejudicially to the holders of property in neighbourhoods which include government buildings within their limits, inasmuch as they are obliged to contribute a greater proportion of rates than their fair share, in consequence of the government not paying their quota for the property in their occupation. But a more liberal policy in this matter is being gradually adopted in accordance to the wishes of Parliament.

From time immemorial it had been customary to consider charitable institutions as being exempt from local rates, but by various decisions of the courts of law, which were sustained and confirmed in 1865 and 1866 by cases before the Court of Appeal,[n] property of this description, and, in fact, all property in useful occupation, whether held by trustees or otherwise, has been declared liable to local rates. The only property since held to be exempt—and that not by statute, but by the authority of the courts of law—is that occupied by the crown, whether for personal or for public purposes, the crown not being held liable to any rates or taxes, unless specially named by Act of Parliament.[o] The whole subject was, in the year 1858,

[m] Hans. Deb. vol. clxxi. pp. 406–425.

[n] Mersey Docks & Harbour Board Trustees *v.* Cameron, 11 House of Lords' cases, p. 443. Mersey Docks and Harbour Board *v.* Penhallow, and others, 12 Jurist Rep. p. 571.

[o] Leith Harbour Commissioners *v.* Poor Inspectors, 1 Law Reports, Scotch Apps. 17. (Fisher's Digest, 1866–7, p. 145.)

referred to the consideration of a select committee of the House of Commons, who reported it as their opinion that all lands and buildings occupied for public purposes ought to be liable to local rates, in the same manner as other property, and should pay rates accordingly.[p] A Bill was prepared to be submitted to the House to carry out this recommendation, but owing to the opposition of the representatives of the charitable institutions that would have been affected by it—and whose liability to such payments had not then been established by the courts—it was abandoned. But consequent upon this report, in the year 1861, the government voluntarily agreed to assume a liability, from which they were legally exempt, and to contribute to the poor-rates of certain parishes wherein government property formed a considerable part of the assessable property, in order to relieve those parishes from a portion of their expenditure on behalf of the poor. But, in all such cases, the government refused to be accountable for police, county, or other local rates usually made or levied with poor-rates.[q]

In 1860, by the 33rd clause of the Act 23 & 24 Vict. c. 112, to provide for acquiring lands for the defence of the realm, the principle of continuing the rateability of property acquired by the government for the public service—provided that the same is not assessed at a higher value than that at which it was assessed when assumed by government—was expressly recognised; thereby carrying out and confirming a principle previously acknowledged in several statutes passed in the last century, but which had fallen into desuetude. In 1865 this matter was investigated in a report by a Treasury Committee, appointed to consider the subject of rating houses in the occupation of government officials;

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[p] Commons Papers, 1857–8, vol. xi. p. 247.

[q] Hans. Deb. vol. cliv. p. 794. *Ibid.* vol. clxxxii. p. 1995. And see Rep. Sel. Com. on Poor Rates' Assessment, &c. Commons Papers, 1867–8, No. 342.

and it was recommended that it should be the duty of the Office of Works to examine and adjust, not only claims for local rates under compulsory enactment, or under the Defence Act of 1860, or otherwise, but also all cases of claims for the payment of local rates upon the public departments, in respect of government property, with a view to insure a uniformity of action in regard to the same, all claims duly allowed being afterwards payable by the department concerned.[r]

This arrangement, however, failed to satisfy those who complained of the unfairness and unreasonableness of any exemption whatever of property in the occupation of the crown from the liability to local rates. Accordingly, on April 24, 1866, a resolution was proposed in the House of Commons, calling upon the government to consider of recommending to Parliament a measure for the settlement of this question. In the course of debate, it was pointed out by the Chancellor of the Exchequer that owing to the want of full information on the subject, it was not yet possible to come to any conclusion upon it. Furthermore, that when this question came to be considered in all its bearings, it would be found to involve another important question; namely, the liability of all public buildings, whether governmental, municipal, or charitable, to contribute towards the revenues of the State by the payment not merely of local rates, but also of direct taxation, which is levied for imperial purposes. Whereupon the motion was withdrawn.[s] On June 21, 1867, the Home Secretary undertook to consider the question, with a view to the introduction of a measure, if possible, at the next session.[t]

Its liability to general as well as local taxes.

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[r] Commons Papers, 1865, vol. xxx. p. 519.

[s] Hans. Deb. vol. clxxxii. pp. 1990–2002. And see Corresp. between the Treasury and the Board of Inland Revenue in 1863, respecting the exemption from income tax of rents and dividends applied to charitable purposes. Commons Papers, 1865, vol. xli. p. 5. See also a paper by Mr. Thomas Hare, on Charitable Endowments, in their relation to the State and to Public Taxation, in the Fortnightly Review, for August 1, 1867, p. 129.

[t] Hans. Deb. vol. clxxxviii. p. 266, and vol. cxc. p. 331.

Parks, statues, &c.

The Office of Works is also entrusted with the important task of providing, for the recreation of the public at large, free walks and parks, and access to the national buildings and collections; also, by the Statute 17 & 18 Vict. c. 33, with the charge, repair, and maintenance of the public statues erected in the thoroughfares of the metropolis; and the assent of the First Commissioner is required for the erection of any such statue hereafter."

Temporary offices.

The Board has also to provide offices for the different public departments, such as commissions of enquiry, which are of a temporary character, and have no fixed accommodation. Public buildings for the use of the British embassies abroad are also under its control.

Furniture for public offices.

Another duty required of the Board is the providing of furniture for all the government offices, courts of law, and other public buildings throughout the kingdom, with the exception of the Admiralty and Inland Revenue offices, who are permitted to provide themselves. This service was first imposed upon the Board in 1828, in respect to a few of the public offices, and it has been gradually extended, under the direction of the Treasury, until the greater part of them have been included in the arrangement, which has been found conducive to economy of expenditure, and to general convenience. Every year the Board request, by circulars addressed to the head of each public office, and to the persons in charge of all public buildings throughout the kingdom, to know their requirements as regards furniture, repairs, or additional accommodation. Each department asks for what it may need, and the Board exercise their own judgment in supplying what they consider really necessary. 'Furniture' is

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[u] See Observations on the Public Statues in London, and on Government control over the same, in Hans. Deb. vol. clxviii. pp. 1084, 1087. And the debate on June 25, 1868, in the House of Commons, upon a resolution, that in the opinion of this House, the Peel statue ought to be removed from its present site in New Palace Yard. *Ibid.* vol. cxcii. p. 2138.

understood to include all upholstery and repairs. A vote of 12,000*l.* is annually taken for this service, and the sum remaining unexpended is repaid to the Exchequer. It is impossible to state beforehand, in the estimate, the amount that will be required for each building; but appended to the estimate for the year ending March 31, 1867, there is a statement showing the cost of furniture, and repairs of furniture, for the year ended March 31, 1865. The furniture of the palaces in the occupation of the Sovereign is paid for out of the Privy purse, and is not under the control of the Office of Works. But the Board supplies, out of a separate vote, the furniture and repairs of those parts of the royal palaces which are only used on state occasions; upon the application and under the direction of the Lord Chamberlain. Up to the year 1854, it was estimated that the total sum annually expended by the Clerk of the Furniture, in the Office of Works, amounted on an average to about 25,000*l.*[v] There is a certain class of houses belonging to the crown, but which are occupied under grace and favour by individuals; the Office of Works does not provide furniture for these houses, but it executes all external repairs, they being part of the royal property.

For royal palaces.

When the Board has any work to be done by contract, it is not thrown open to indiscriminate public competition, but is confined to about fifteen or twenty of the best tradesmen, &c. in London, from whom the lowest tender is accepted.

Contracts.

The Board is placed by Act of Parliament under the direction and control of the Treasury, whose sanction is required to any work not directly ordered by Parliament. All estimates for large public works are submitted for the special approval of the Treasury. The Treasury appoint the secretary, clerks, and ordinary employés of the office, and, with the sanction of the Treasury, the Board appoints

The Board in relation to the Treasury.

[v] Commons Papers, 1854, vol. xxvii. p. 357. See Peto on Taxation, pp. 318, 319.

or employs such architects, surveyors, and other professional persons as may be required.

The First Commissioner.

The salary of the First Commissioner is 2,000*l.* per annum. By the Act 14 & 15 Vict. c. 42, sec. 20, he is permitted to sit in the House of Commons for the purpose of representing the department therein. It has been already noticed that efforts have been made to induce the Government to consent that this office shall cease to be political, inasmuch as there is nothing political in the duties of the Chief Commissioner, he being merely the principal surveyor of the State, and his office a department for structural works, to carry out undertakings which have been sanctioned by Parliament. Should the Government wish to retain a political First Commissioner, it has been urged that his functions should be limited to answering questions in Parliament, and moving estimates on behalf of the Board; and that the office itself should be reorganised, and placed under the direction of two permanent commissioners. But Ministers are unwilling to advise any such changes on public grounds.[w]

Subordinates.

There is a permanent secretary (with a salary of 1,200*l.* per annum) in this department, an assistant secretary, and numerous draftsmen, surveyors and clerks.[x]

Irish Board of Works.

There is a separate *Board of Public Works in Ireland*, constituted under the Act 1 & 2 Will. IV. c. 33, which was passed in 1831, having charge of all the public works in that country, which do not belong to counties or to the Poor-law administration, including all public buildings, parks, harbours, roads and bridges, canals, educational buildings, coast-guard houses, customs houses, fisheries, drainage, inland navigations, railways, police courts, prisons, hospitals, &c. The jurisdiction of this Board, it

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[w] See *ante*, p. 476. Corresp. &c. respecting department of Woods and Works, Com. Papers 1852, vol. liii. p. 299. Report on Office of Works, *Ibid.* 1854, vol. xxvii. p. 351. Report on Miscel. Expend. 1860, vol. ix. p. 476. Murray's Handbook, 140. Thomas' History Public Depart. pp. 83–109. And see *ante*, p. 161.

[x] Civil Service Estimates, 1868–9, Class II. No. 11.

will be seen, is much more comprehensive and complete than that of the Office of Works in England. It is in charge of two paid commissioners, with a third (being the Chief Commissioner of Valuation) whose connection with the Board is little more than nominal. There are also a secretary, engineers, and a numerous staff of clerks, &c. The Board is subject to the control of the Treasury.[y]

5. *The Office of Woods, Forests, and Land Revenues,* which, until 1851, was combined with the Office of Works, has since been placed in charge of two working commissioners (with salaries of 1,200*l.* per ann.) who are permanent officers, each taking a share of the duty and oversight, to one being allotted the control of the land revenues, to the other the management of the woods and forests.[z] The property under the management of this department is in the hereditary possession of the crown, and is administered for revenue purposes, subject to the necessary outlay for the maintenance and improvement of the inheritance.[a] The Commissioners' powers are very extensive, as the crown lands and royal forests of Great Britain are of

Office of Woods, Forests, &c

[y] Rep. on Misc. Exp. 1860, Evid. 2270–2293, 2382–2409. For a brief account of the history of the Irish department of Public Works, and a statement of its present duties, see Minutes, &c., issued under the Exchequer and Audit Departments Act; Commons Papers, 1867, vol. xxxix. p. 379. There is also a Board of Control of Lunatic Asylums in Ireland, which is nominated by the Lord-Lieutenant, under the Act 18 & 19 Vict. c. 109. It consists of four commissioners, two of them being the commissioners of the Board of Works, and the other two medical inspectors. Though heretofore this Board has acted under the Lord-Lieutenant, the Treasury are about to assume a control over it. *Ibid.* Civil Service Estimates, 1868–9, Class II. Nos. 8, 12.

[z] See a learned note, pointing out the distinction between lands which have been assigned by the State for the maintenance of the honour and dignity of the crown, and estates which belong to the reigning sovereign, for the time being, as a private person,—in Smith's Parl. Rememb. 1862, p. 104. See stat. 25 & 26 Vict. c. 37, concerning the private estates of the crown. And see a discussion upon a Bill to grant to her Majesty the enjoyment of Claremont House during her life or pleasure. Hans. Deb. vol. clxxxii. pp. 960–965, 1075. *Ibid.* vol. clxxxiii. pp. 423, 921. Act 29 & 30 Vict. c. 62, sec. 30.

[a] Hans. Deb. vol. clxxviii. p. 16. *Ibid.* vol. clxxxiii. p. 958.

great extent and value. They are required to report annually to Parliament.

This office is represented in the House of Commons by the Secretary of the Treasury, the commissioners being declared by the Act 14 & 15 Vict., c. 42, sec. 10, ineligible to sit therein. But this arrangement has proved very defective, and has occasioned great public inconvenience.[aa] The Board is subordinate to the Treasury, and subject altogether to its supervision and control.[b]

On April 21, 1863, a motion was made in the House of Commons for the appointment of a select committee to enquire into the operation of the Act 14 & 15 Vict. c. 42, by which the Office of Woods, Forests, &c., and the Office of Works and Public Buildings, were constituted as two separate departments, with a view to the reunion of the same; but after a short debate the motion was negatived. On March 21, 1865, a similar motion was made and negatived.

The General Post Office.

The Post-Office.

The Post Office is a branch of the public service which directly concerns the interests of the whole community. It is also a principal source of public revenue. At the present time (1868) the Post Office yields a net revenue of nearly a million and a half pounds sterling, notwithstanding the large expenditure for the conveyance of mails by sea. It has been often urged that this income should not go to enrich the State, but should be applied for the purpose of extending postal advantages to remote country districts. But the Government have hitherto refused to admit the justice of this claim, considering that it would be virtually taxing one part of the nation for the benefit of another; and that if the large revenue thus obtained, without pressure or difficulty, were so absorbed, it would

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[aa] See *ante*, p. 243.

[b] See Civil Service Est. 1868-9, Class II. No. 18. Peto on Taxation, ch. vii. Rep. Misc. Exp. 1860, p. 132.

necessitate additional taxation of a much more objectionable character to make up the loss to the State.[c] Wherefore as a general principle the Post-office authorities in England refrain from sanctioning any extension of postal facilities, unless they are likely to prove self-supporting. This rule, however, is not rigidly adhered to, but every particular case is dealt with in a liberal spirit.[d]

Although presided over by a minister of the crown, who is usually but not invariably a member of the Cabinet, the Post Office, considered as a revenue department, is subordinate to the Treasury. Otherwise, the Postmaster-General has the entire control over its administration. His office is accordingly both onerous and laborious, as it involves the oversight and direction of an immense establishment. He has also to negotiate postal treaties with foreign powers; to determine questions connected with the establishment of increased postal facilities at home and in the colonies, subject, of course, to the approval of the Treasury in pecuniary matters; to regulate promotions, and to distribute the patronage of the department.

The Postmaster-General.

The patronage in the hands of the Postmaster-General is very great. He has the appointment of all his subordinate officers and clerks, with the exception of the 'Receiver-General,' who is appointed by the Treasury; and of the various local officers and employés of every grade throughout the kingdom, amounting in all to upwards of 20,000 persons, with the exception of the postmasters in small country places where the emoluments are so small as to require the office to be held in conjunction with some business or profession. In such cases, it is deemed to be for the interest of the public that the appointment should be conferred upon a resident in the place, and be in the gift of the Treasury, though officially proceeding from the Postmaster-General. In making these appointments, it is usual for the Secretary to the Treasury to

Appointments to office.

[c] See Mr. Gladstone's observations in Hans. Deb. vol. clxxxii. p. 1082.

[d] *Ibid.* vol. clxxiv. p. 415.

take the recommendation of the members of the House of Commons for the particular district or locality, with a view to ascertain the convenience and wishes of the neighbourhood.[e]

Regulations have been established for promotions from one class to another, amongst the Post-office employés, with a view to insure the selection of the fittest persons to fill up any vacancy. Country postmasters are permitted to appoint their own clerks, subject to the approbation of the Postmaster-General, who also retains the right of dismissing them for misconduct.

Parliamentary influence.

Post-office clerks, in common with other employés in the civil service, though they may owe their appointments in the first instance to parliamentary influence, are expressly forbidden from making use of any political or parliamentary interest for their subsequent advancement; and they are strictly prohibited from sending forward any official communication in regard to their personal claims or grievances, except through the head of their particular department, under penalty of dismissal.[f]

Members of Parliament on both sides of the House are often consulted by the Postmaster-General in regard to the appointment of letter-carriers, &c., in country places, but in the distribution of his patronage the Postmaster-General is free to exercise his own discretion.

Postmaster General in relation to Parliament.

The salary of the Postmaster-General is 2,500*l.* per annum. It is only since the passing of the Act 1 Will. IV. c. 8, consolidating the offices of Postmaster-General of Great Britain and of Ireland, that this has been accounted a political office. Previously, or until the accession of

[e] Report of Commission of Inquiry into the Post Office, 1854, p. 35. The Treasury Minute confirming these recommendations fixed upon 175*l.* as the maximum salary to be assigned to the Treasury nominees (Commons' Papers, 1854, vol. xxvii. p. 442). But this amount has since been reduced to 120*l.* in England, and 100*l.* in Scotland and Ireland; and all postmasters whose salary exceeds these amounts are nominated by the Postmaster-General. Lewins, Her Majesty's Mails, p. 189.

[f] See *ante*, vol. i. p. 396. Papers relating to the case of John Carroll. Com. Papers, 1867, vol. xxxix. p. 291.

George IV., it was held by two joint commissioners, who were expressly disqualified for sitting in the House of Commons, on account of the office having been created in 1711, subsequent to the statute of Anne, which declared that all 'new offices' should render their possessors ineligible for a seat in the House of Commons. For this reason the Postmaster-General has been hitherto almost invariably a peer. During the Canning administration, in 1827, the office was conferred upon a commoner; but this occasioned considerable inconvenience, as the department was unrepresented in both Houses, and the experiment was never repeated.[g] At length, after several unsuccessful attempts,[h] an Act was passed in the year 1866 to render the Postmaster-General eligible for the House of Commons.[i] When he is a member of the House of Lords it becomes the duty of the Secretary of the Treasury to represent the department in the Lower House.[j]

The Postmaster-General reports annually to the Lords of the Treasury upon the condition of his department, and these reports are invariably laid before Parliament.

New duties imposed on the department.

In 1839 the system of transmitting Money Orders through the Post Office was first formally established, though it had been in partial operation for some years previously; and in the year 1861, advantage was taken of the facilities afforded by the Post-office money order system in operation throughout the kingdom to introduce Post-office Savings Banks, which have proved of incalculable benefit to the poorer classes in Great Britain and Ireland.[k] And in 1864 another boon was bestowed by

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[g] See *ante*, p. 233.

[h] See Mr. Darby Griffiths' motions, Hans. Deb. vol. clxxvi. p. 1390; vol. clxxviii. p. 378.

[i] Act 29 & 30 Vict. c. 55.

[j] Authority for the preceding statements, and further particulars concerning this department, will be found in the Report on Official Salaries, 1850, Evid. 3238–3292. Commons Papers, 1854, vol. xxvii. p. 399. Report on Misc. Expenditure, 1860, Evid. 1370. Hans. Deb. vol. clxxiv. p. 1219. And the annual Reports of the Postmaster-General.

[k] By the Act 24 Vict. c. 14. For an account of these banks, see Rep. of Committee of Public Accounts for

Government upon the poorer classes in the United Kingdom by empowering small payments to be received from time to time through the Post Office, towards the purchase of Government Annuities of small amounts, and on behalf of contracts for payments of sums of money on death.[1]

Lapsed money orders.

A question has lately arisen before the Committee of Public Accounts, in regard to the disposal of unclaimed Post-office money orders. Hitherto the moneys accruing from lapsed Post-office orders have been used by the department to form a fund for assisting its officers in the insurance of their lives. But as it is obviously improper for a department to create a fund out of money which neither belongs to them nor has been appropriated by Parliament, it has been suggested by Mr. Vine, of the Audit Office, in evidence before the Committee of Public Accounts, in 1867, that the money represented by these lapsed orders should be paid into the Exchequer, and if the orders are afterwards presented, Parliament should provide the means of paying them. But as yet the question stands open, the Treasury having come to no decision upon it.[m]

Sunday labour.

The propriety and expediency of enjoining the cessation of Sunday labour in the various Post Offices throughout the United Kingdom has also frequently engaged the attention of Parliament, and has sometimes given rise to the expression of contrary opinions thereon.[n] In 1850, a

1865, Appx. No. 2, pp. 156–189. Hans. Deb. vol. clxxix. p. 194. And Lewins on Post-office Savings Banks. For recent statistics, showing the extraordinary and unexpected advantages which have accrued to the public generally from the Money Order system, and the Post-office Savings Banks, and the rapid growth and development of the same, see the Postmaster-General's Report for 1867, and Mr. Scudamore's evidence before the Committee on the Electric Telegraphs Bill. Commons Papers, 1867–8, No. 435, pp. 121–124.

[1] Act 27 & 28 Vict. c. 43. See tables of premiums to be charged under contracts for the insurance of lives or the grant of Government annuities; and under contracts for the grant of Government deferred life annuities; also, regulations made pursuant to the Act aforesaid, by the Postmaster-General, respecting Government insurances and annuities. Commons Papers, 1865, vol. xxx. pp. 683–806.

[m] Second Rep. Com. Pub. Accts. 1867. Min. of Evid. 509–517.

[n] See *ante*, vol. i. p. 262.

royal commission appointed to investigate this question, made various recommendations on the subject,[o] to which the Lords of the Treasury gave effect, with a view to lighten as far as possible labour in this department on the Lord's Day, and to discontinue all Sunday posts in rural districts, at the request of 'the receivers of six-sevenths of the Sunday letters.'[p] But persons employed in the Post Office are expressly prohibited from agitating for a discontinuance of the Sunday delivery of letters.[q]

Postal contracts.

It devolves upon the Post-office department to enter into contracts for the transmission of mails by steam or sailing vessels to places beyond the seas; but no such contracts are considered to be binding until an opportunity has been afforded to the House of Commons of expressing its opinion thereon.[r] And while it is manifestly undesirable that either the Government or the House should be fettered by the House of Commons adopting an abstract resolution defining the terms upon which all postal subsidies shall be hereafter granted,[s] it is essential that every postal contract should be submitted to the House at a sufficiently early stage of the agreement, to admit of a free expression of opinion in regard to the same, without entailing any pecuniary responsibility to the proposed contractors, in the event of the House objecting to the contract.[t]

Electric Telegraphs.

In 1868, an important addition was made to the duties of the General Post Office by transferring the control of the Electric Telegraphs within the United Kingdom of Great Britain and Ireland to that department. This reform had been in contemplation by the government for several years, and had been advocated by the Chambers of Commerce throughout the kingdom, as well as by a large and influential portion of the public press. It was

[o] Commons Papers, 1850, vol. xx. p. 455.

[p] *Ibid.* vol. liii. p. 183. *Ibid.* 1854, vol. lx. p. 27. 1867-8, No. 230.

[q] *Ibid.* 1867-8, No. 230.

[r] See *ante*, vol. i. pp. 298, 501.

[s] Hans. Deb. vol. cxc. p. 2010.

[t] *Ibid.* vol. clxxxix. pp. 658-702, 1561. See the Churchward case, *ante*, vol. i. p. 498.

ultimately effected by means of a permissive Act;[u] which empowers the Postmaster-General, with the consent of the Lords of the Treasury, from time to time to purchase, with moneys to be granted by Parliament for the purpose, the undertakings of any existing telegraph company whose shareholders may consent to such sale and transfer. Provided that the terms of the proposed purchase shall have previously 'lain for one month on the table of both Houses of Parliament without disapproval.'

This Act is not intended to confer on the Postmaster-General any rights which the telegraph companies have not been authorised to exercise, or to give him any greater powers over the holders of private property than the said companies have already obtained from Parliament. It is designed merely to place the Postmaster-General in the position of a newly organised telegraph company, leaving him to negotiate with the existing companies for the transfer of their property on such terms as shall be satisfactory to him and to them, and shall be approved of by Parliament.

When the object contemplated by this Act shall have been fully accomplished, there is no doubt that it will be attended with great advantages to the State, as well as to the public at large, by establishing a cheaper, more widely extended, and more expeditious system of telegraphy throughout the whole of the United Kingdom, and also by strengthening the means of defence against hostility from without, and aiding in the maintenance of law and order within the kingdom.[v]

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[u] Act 31 & 32 Vic. 310. In its progress through the House of Commons the Bill was referred to a select committee, who took evidence thereon, and reported it with amendments, and with an opinion 'that it is not desirable that the transmission of messages for the public should become a legal monopoly in the Post Office.' Also, that the Postmaster-General, with the consent of the Treasury, should be empowered to make special agreements for the transmission of certain classes of messages at reduced rates, but that the House of Commons shall be duly informed of the same; and furthermore, recommendations in regard to the acquisition and working of submarine cables, &c. Commons Papers, 1867-8, No. 435.

[v] See Reports, and other papers, upon the proposed transfer to the

The department of the Postmaster-General is under the control of a secretary, whose salary ranges from 1,500*l.* to 2,000*l.* a year; with two assistant secretaries. The number of employés in the chief offices in London, Dublin, and Edinburgh, amounted, in 1868, to 4,430.[w] Employés.

THE SECRETARIAT OF STATE.

The origin of the office of Secretary of State, or, as it was formerly styled, King's Secretary, is difficult to trace. From the researches of Sir Harris Nicolas we may infer that the ancient English monarchs, like those of other countries, were always attended by a learned ecclesiastic, known at first as their 'clerk,' and afterwards as 'secretary,' whose duty it was to conduct the king's correspondence, and to convey his commands in writing to the high officers of State, when they were not personally communicated by the mouth of the sovereign. These functionaries were not, however, in any sense regarded as Secretaries of State, nor were they styled such, in England, until the end of Queen Elizabeth's reign; after which the term was generally employed to designate the king's secretary. Moreover, unless they had a seat in the Privy Council, they were never accounted responsible for the measures of government.[x] Secretary of State.

Until the middle of the reign of Henry VIII., the king's secretary appears always to have been a priest. After a few years' service, he was usually promoted to a bishopric, or to some other lucrative post. He was not ordinarily a member of the Privy Council until the time of Henry VI., but when admitted to this distinction, although he shared the responsibilities of other Councillors, he was otherwise nothing more than an executive officer,

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Post Office of the control and management of the Electric Telegraphs. Commons Papers, 1867-8, Nos. 202, 272. Also Edinb. Rev. Jan. 1869, Art. vi.

[w] Civil Service Estimates 1868-9. Revenue depts. pp. 33–47.

[x] Nicolas, Pro. of Privy Council, vol. vi. pp. xcvii. cxxix.

answerable only to his sovereign for the performance of his duties, which entailed upon him no constitutional responsibility, and required nothing more than a faithful and implicit obedience to the king's commands.[y]

Duties and responsibilities of this office.

The Secretary's office became gradually more important from this period, but it was not until after the Revolution of 1688, when the direction of public affairs passed from the Privy Council to the Cabinet, that the Secretary of State began to assume those high duties and responsibilities which have rendered his office one of the most important and influential in the government, and his authority to use the name of the sovereign, such as can be questioned by none but the sovereign himself. With this accession of dignity and authority, he became directly answerable to Parliament for the constitutional and judicious exercise of the prerogatives of the crown.[z]

The principal Secretaries of State have the sole control of the business of their respective offices, and are entirely responsible for all affairs of State transacted therein; subject, of course, to the general superintendence of the Cabinet Council.[a]

As high officers of State, acting in the name and on behalf of the crown, they possess great, if not undefinable powers, in addition to those which they derive from the statute or common law. In cases that involve the liberty of the subject, a Secretary of State has a right to act in a magisterial capacity. The proper safeguard against the abuse of these enormous powers is to be found in the protection afforded to the subject from all illegal acts, by whomsoever committed, by the courts of law;[b] as well as in the responsibility for every act of administration to the high court of Parliament.[c]

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[y] Nicolas, Pro. of Privy Council, vol. vi. pp. cxxxii.–cxxxiv.

[z] *Ibid.* p. cxxxvi.

[a] Earl Russell, Rep. Committee on Education, 1865, Evid. 2905.

[b] See cases cited defining and restraining the authority of a Secretary of State, in Broom's Constitutional Law, pp. 525–617, 726, *n.* 727. See also, Nicolas, Pro. of Privy Council, vol. vi. p. cxxxvii.

[c] See *ante*, vol. i. p. 299.

The number of Secretaries of State has varied, from time to time, with the exigencies of the public service. Up to the reign of Henry VIII., it was customary to have but one secretary. But in the latter part of this reign, a second principal secretary was appointed, with coordinate powers and duties. Thenceforth, with some exceptions, it became usual to appoint two Secretaries of State, until after the union with Scotland, when, as will be presently noticed, the number was again increased. There are now five Principal Secretaries of State, viz.:—the Home, the Foreign, and the Colonial Secretaries, and the Secretaries for War and for India. Constitutionally considered, however, there is but one Secretary of State. The office may be said to be in commission, as its division into separate departments is merely by conventional agreement. Whatever may be their number, the Principal Secretaries of State really constitute but one officer, each being co-equal and co-ordinate with his colleagues, and authorised, if need be, to transact the business appertaining to all or either of them; though, each has a department which is ordinarily assigned to his particular charge.[d]

The Secretaries of State are the only authorised channels whereby the royal pleasure is signified to any part of the body politic, whether at home or abroad; and either of them may be empowered to convey the Queen's commands, at any time, to any person.[e] The counter-signature of a Secretary of State is necessary to give validity to the sign-manual. It is under this safeguard that the patronage of the crown is administered, and every official act of the crown performed. Thus, while the personal immunity of the sovereign is secured, a responsible adviser for every act is provided, who must be prepared to answer for what the crown has done.[f]

[d] Pro. of Privy Coun. vol. vi. pp. cviii. cxxiii. cxxx. cxxxix.

[e] Rep. Com. on Foreign Trade, 1864, Evid. 1933.

[f] Rep. Com. on Organisation of the Army, 1860, pp. vi. vii. Evid. p. 32. Sir R. Peel, in Mirror of Parl. 1829, p. 806. And see *ante*, vol. i. pp. 170-172.

Mode of appointment.

A Secretary of State is appointed directly by the crown, and is removable at the royal pleasure: but while he holds the seals of his office he is responsible for the acts of his sovereign, and administers the royal authority and prerogative which are delegated to him without reserve. In time of war, or in cases of emergency, the Secretaries of State exercise a power direct from the crown, even over their colleagues in the administration. Thus, Lord Chatham, when Secretary of State, is said to have required the First Lord of the Admiralty to sign instructions which he did not allow him to read.[g] Both military and naval commanders, during the Peninsular campaigns, corresponded direct with the Secretary of State. And more recently, Mr. Sidney Herbert, when Secretary-at-War and a Cabinet minister, was overruled and controlled, in a matter within his own department, by a written order from a Secretary of State.[h]

A Secretary of State receives his investiture by the delivery of the seals of office from the hand of the sovereign in council, and the appointment is formally terminated by the return of the seals into the sovereign's hands. Upon the delivery of the seals,[i] although he may not have received a patent, a Secretary of State becomes invested with the full enjoyment and exercise of all his powers. It has been the general practice, however, since the year 1578, at least, to issue letters patent of appointment, during pleasure; but in the frequent changes of office, of late years, this has sometimes been dispensed with. But the attention of Parliament having been directed to this irregularity, it has been decided that

[g] See *post*, p. 596.

[h] Rep. on Org. of Army, 1860, pp. 396, 447.

[i] The seals are three in number, namely, the Signet, which contains the royal arms and supporters; another seal of a smaller size, having an escutcheon of the king's arms only; and a still smaller seal, called the Cachet, which is similarly engraved. Either the Signet or the second seal above mentioned, according to circumstances, is affixed to the instruments which receive the royal signature. The Cachet is only used for sealing the king's (or queen's) letters to sovereign princes. Pro. Privy Council, vol. vi. p. ccxviii. Stat. 14 & 15 Vict. c. 82.

hereafter the necessity for taking out a patent will be strictly maintained.[j] The patent is couched in general terms, conferring the office without limitation of powers. There is a fee of 200*l.* payable upon the receipt of the patent, which payment has been recently enforced by order of the Chancellor of the Exchequer.[k] Upon the creation of the office of Secretary of State for War, in 1855, a supplementary patent was issued containing certain special reservations in the powers granted to that functionary; the constitutional question arising out of which will come under review when we are considering the powers belonging to this department of the secretariat.

To attend on the Sovereign, &c.

The Secretaries of State were formerly resident in the royal household, and continue to be in personal attendance upon the Sovereign on all public ceremonies and state occasions. One is always in attendance upon the Queen during her occasional visits to various parts of the kingdom; and it is a rule that one must always be present in the metropolis.[l]

Presence in Parliament.

The Secretaries of State are invariably members of the Privy Council, and have always a seat in the Cabinet. As Cabinet ministers it is necessary that they should sit in one or other of the Houses of Parliament.

Pursuant to the statute of Anne,[m] two only of the Principal Secretaries of State (and two Under-Secretaries) were at liberty to sit at any one time in the House of Commons. This was the actual number of Secretaries of State at that time. But in 1708, Queen Anne herself, in consequence of the increase of public business consequent upon the union with Scotland, appointed a third secretary.

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[j] Proc. Privy Council, vol. vi. p. cxxxix. Hans. Deb. vol. cxli. pp. 1105, 1247. *Ibid.* vol. cxlii. p. 620. *Ibid.* vol. cxliii. p. 1426.

[k] *Ibid.* vol. cliii. pp. 1300, 1808, 1828.

[l] Rep. on Off. Sal. 1850, Evid. 1237. Macaulay, Hist. of Eng. vol. iv. p. 9.

[m] Chap. 7, sec. 25, as construed in connection with the Act 22 Geo. III. c. 82, abolishing the third Secretaryship of State, and declaring that if the same should be afterwards revived, it should be deemed a 'new office,' rendering the incumbent thereof ineligible to a seat in the House of Commons.

On a vacancy occurring in this office in 1746, the third secretaryship was dispensed with. This continued until 1768, when the increase of Colonial business rendered it again necessary to appoint a third secretary, to take charge of the same.[n] But in 1782, upon the recommendation of Edmund Burke, and as a measure of economical reform, the office of third Secretary of State was abolished by the Act 22 Geo. III. c. 82, and the charge of the colonies transferred to the Home Secretary. In 1794, owing to the increase of military correspondence, consequent upon the war with France, it became necessary, once more, to appoint a third Secretary for War. And in 1801, the charge of the colonies was added to this department.

On December 30, 1794, a point of order was raised in the House of Commons to the effect that the presence therein of Mr. Secretary Dundas, the Secretary for the new department of War, was contrary to the statute of Anne above mentioned. To this it was replied that inasmuch as Mr. Dundas had been Home Secretary before the charge of the War Department was assigned to him, the Duke of Portland, the new Home Secretary, must be considered as the 'third Secretary' under the statute: but that as his Grace sat in the House of Lords, the statute had not been violated.[o] On November 7, 1797, the objection was again raised upon a formal motion. But it was opposed by Mr. Pitt on the same grounds as before, and was negatived on a division.[p] Since this time it has been the practice that one, at least, of the principal Secretaries of State should be a member of the House of Lords.

In 1854, upon the creation of a fourth Secretaryship of State, for the exclusive charge of the War Department, it was necessary to pass an Act of Parliament to enable a third Secretary of State, and a third Under-Secretary, to sit in the House of Commons.[q] So also, upon the creation of a fifth Secretaryship, for India, in 1858, it became necessary for an Act to be passed authorising any four of

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[n] Cox. Inst. 665.
[o] Parl. Hist. vol. xxxi. p. 1003.
[p] *Ibid.* vol. xxxiii. p. 977.
[q] 18 & 19 Vict. c. 10.

the principal secretaries of state, and under-secretaries, to hold seats in that House.[r]

Every principal secretary of state receives a salary of 5,000*l.* per annum; and there is attached to each branch of the secretariat a permanent under-secretary, with a salary of 2,000*l.* a year, and a parliamentary, or political under-secretary, with a salary of 1,500*l.* a year.[s] Salary. Under-Secretaries of State.

The Under-Secretaries of State

are appointed by the joint action of the head of the department, and the Prime Minister. The secretary would probably consider that the Premier was responsible for the general conduct of public affairs, and would be ready to acquiesce in the appointment of any capable person suggested by him, while he might himself recommend some one in whom he had particular confidence.[t]

All matters relating to the discipline of the office devolve upon the permanent under-secretary, and the whole of the work passes through his hands.

The political under-secretary has the general supervision of all that is done in the department, but is unable to devote much time to the details of ordinary official business, on account of the engrossing nature of his parliamentary duties. He is required to represent his department in Parliament; and if the principal secretary of state be a member of the House of Lords, he should have a seat in the House of Commons. Political under-secretaries are also frequently called upon to represent either their own department, or the government generally, upon parliamentary committees.[u] Political Under-Secretary.

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[r] 21 & 22 Vict. c. 106, sec. 4. In 1864, a question of order arose in the House of Commons, in consequence of five under-secretaries of state holding seats in the House together. The particulars of this case have been already noted. See *ante*, p. 257.

[s] See Civil Service Estimates for 1868–9. Class II.

[t] Rep. on Official Salaries, 1850. Evid. 300.

[u] Rep. on Off. Sal. 1850. Evid.

Permanent Under-Secretaries.

Every branch of the secretariat, with the exception of the Home Department, has a permanent assistant under-secretary, who shares the labours of his superior, and superintends the business of the office, during his unavoidable absence. These assistants receive, each of them, 1,500*l.* per annum.

The permanent heads of departments have to write the drafts of despatches. If a despatch arrives which adverts to former correspondence, they are required to refer to the same, and to prepare a minute of the subjects which particularly require attention, suggesting the course that ought to be taken in the matter. This minute is first submitted to the permanent under-secretary, then to the parliamentary under-secretary, and then to the secretary of state. All ordinary business is expected to reach the secretary of state in such a form, that he can dispose of it by simply adding his initials.[v]

The permanent under-secretaries of the great departments of state are empowered in all official correspondence to make use of the name of the department, as they would a common seal. They do so upon their own responsibility; and if they abuse or misuse their trust, an appeal can be made to the chief; who is really as responsible to the crown and to Parliament for the act of his subordinate as if he had signed the document himself.[w] Thus, in the Treasury, the Admiralty, or the Education Office, the secretary would write in the name of 'My Lords,' and in any branch of the secretariat, in the name of the particular secretary of state, although practically the communication would emanate from the under-secretary himself. Considering the immense amount of business which passes through the principal public departments, such an arrangement is unavoidable, as it would be impossible to submit the correspondence, in every instance, to

89, 1471, &c., 1939, &c. Rep. Com. on Diplomatic Service, 1861, pp. 50, 94.

[v] Rep. Off. Sal. 1850. Evid. 1548, &c.

[w] See Hans. Deb. vol. cxcii. p. 1825; *ante*, p. 174.

the official head. But in every doubtful or difficult case, the head of the department is appealed to, and his instructions obeyed.[x]

Cabinet boxes.

Drafts of despatches, and other important papers, are circulated amongst the members of the Cabinet, in private despatch boxes, to which each Cabinet minister has a master-key. These boxes are conveyed to and fro in charge of queen's messengers, who are confidential servants, all of them, nominally, upon the staff of the Foreign Secretary's office. In practice, however, they are divided into two classes, for home and foreign service; and as their duties require them to be at the command of all the Cabinet ministers, vacancies in their number are filled up by each of the secretaries of state, in rotation.[y]

The establishments of the several branches of the secretariat are regulated by order in council.

Standing counsel.

The Secretaries of State for the Home Department, for the Colonies, and for India, are each assisted by a standing counsel, as their confidential adviser upon legal questions. The standing counsel to the Home Office is usually employed professionally in drafting government Bills.[z]

The Home Secretary.

Home Secretary.

The Secretary of State for the Home Department has direct supervision over all matters relating to the internal affairs of Great Britain and Ireland; but England is such a self-governing country that a large proportion of administrative business is transacted without the necessity for his immediate control. His duties and responsibilities are principally confined to the maintenance of the internal peace of the United Kingdom, the security of the laws,

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[x] Rep. Com. on Education, 1865. Evid. 145, &c. 290, 338–356. And see *post*, p. 649.

[y] Murray's Handbook, p. 276.

[z] Hans. Deb. vol. clxxxv. pp. 1208, 1235. As to the eligibility of the standing counsel to sit in the House of Commons, see *ante*, p. 266.

and the general oversight in the administration of criminal justice.

To maintain public peace.

The Home Secretary is especially responsible for the preservation of the public peace, for the due administration of the criminal law, so far as the prerogative of the crown is concerned, and for the security of life and property throughout the kingdom. For this purpose, acting in the name of the sovereign, he exercises by long usage extensive powers over the civil and military authorities of the country. He himself is a magistrate, and has a power of commitment to prison by warrant for just cause.[a] So far as regards the movements of the regular army, and the direction of the militia, yeomanry, and volunteer forces, his authority was superseded by the appointment, in 1854, of a Secretary of State for War. But in the suppression of riots and tumults, the Home Secretary would still be the proper channel for conveying her majesty's commands to the lords-lieutenant of counties, or to the officers in charge of districts, placing them in communication with the magistracy upon any emergency, and directing them how to act.[b]

To control administration of justice.

In addition to his prescriptive police powers, large statutory authority has, within the last forty years, been specially assigned to the Home Secretary. He has a direct controlling power over the administration of justice and police in the municipal boroughs, and over the police in and around London, and the supervision of the county constabulary.[c] He also exercises, by long usage, a power

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[a] Lord Campbell, in 5 Ellis and Blackburn, 353. Lord John Russell, in Hans. Deb. vol. xcii. p. 355.

[b] Hans. Deb. vol. cxxxi. p. 237. And see *Ibid.* vol. clxix. p. 198. Report of Commissioners on the Volunteer Force, Commons Papers, 1862, vol. xxvii. p. 89. For returns of applications to Home Secretary for a military force in aid of the civil power in England, and of cases wherein magistrates have acted without previous application to government, see Commons Papers, 1855, vol. xxxii. p. 669, and 1856, vol. l. p. 521.

[c] Objections have been urged against the excessive extension of the police force of late years, and its subjection to the direct and exclusive control of the Home Office. See Peto on Taxation, pp. 332–339. In 1833, complaint was made to the H. of Commons of the conduct of the

to examine and commit for trial persons charged with offences against the state; and he may, by virtue of recent statutes, direct certain fugitive offenders from France and the United States of America to be delivered to their respective governments. He has a similar power with respect to colonial offenders, and may authorise the execution of warrants, under which they may be apprehended and returned to the colonies for trial.

Local Government.

In carrying out the provisions of the Local Government Act of 1858, for self-government, local improvement, and the preservation of the public health in towns, the Home Secretary (in connection with the medical department of the Privy Council) has a superintending power; also, in regard to interments, and the opening and closing of burial grounds, on sanitary considerations.

Protection of labour, &c.

Other duties have been imposed upon the Home Secretary by the Acts for the regulation of factory labour, for the inspection of fisheries and of coal mines, for the regulation of labour in mines and collieries, for the regulation of schools of anatomy, for the protection of pauper lunatics, and for the general control and supervision of lunatic asylums.

Criminal matters.

The Home Secretary has the general oversight and ultimate control in all matters relating to prisons, penitentiaries, reformatories, criminals, and the administration of criminal justice. He is especially responsible for the exercise of the royal prerogative in the reprieve or pardon of convicted offenders, or the commutation of their sentences. Applications for the exercise of the prerogative of mercy, amounting to some thousands of cases in a year, occasion great labour to this officer, requiring always his personal investigation and decision, with such assistance as may be derived from the judges before whom

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police force, imputing to them equivocal practices, too much akin to the spy system, so prevalent on the Continent; but enquiry by a select committee elicited little more than the misconduct of a single policeman, who was dismissed from the service. See *ante*, vol. i. p. 358.

the case in question has been tried. Hence he is obliged to be in frequent communication with the presiding judges at the assizes, and of the central criminal court, and also with the local magistracy throughout the kingdom.[d] Complaints in reference to the conduct of particular magistrates are forwarded (through the lord-lieutenant of the county) to the Home Secretary, by whom they are transmitted for the consideration of the Lord Chancellor.

Other duties.

These are the principal duties of the Home Secretary, in relation to administrative affairs, but he exercises controlling powers, under the provisions of several statutes, in respect to the registration of births, deaths and marriages, the commutation of tithes, the enclosure of commons, turnpike trusts, small debts courts, the registration of aliens, &c., and he is empowered to grant certificates of naturalisation, conferring civil rights as British subjects on foreigners of good repute who are able to produce proofs of a long residence and intention to continue to reside in the United Kingdom.

Appointments, honours, &c.

The Home Secretary has the formal preparation and authentication of such royal warrants, grants, approbations of lords-lieutenant, appointments, patents, licenses, &c., as do not specially belong to the other branches of the secretariat, or to the Treasury. All such matters pass through his office, and are laid by him before the sovereign for signature or approbation.[e] He also receives all addresses to the queen (except those presented at levees), and all memorials and petitions, upon which, if respectfully worded, he takes the royal pleasure, and conveys the same to the persons from whom they emanated, acting as the official channel of communication between the sovereign and her subjects.

The Home Secretary recommends to the sovereign for the honour of civil knighthood. By long custom, he no-

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[d] Rep. on Off. Sal. 1850. Evid. 2887. Campbell's Chancellors, i. 19 *n.* Harrison *v.* Bush, Ellis and Blackburn, vol. v. p. 344. *Ante*, vol. i. p. 344.

[e] First Report on Fees, 1786, p. 19.

minates to some of the offices in the gift of the crown, and many offices have been placed in his gift by recent statutes. In his patronage is included that of his own department and the State Paper office. He nominates the Keeper of the Records in the Tower, and the Chief Porter of the Tower, the Military Knights of Windsor, and the almsmen of the various cathedrals; also the chief officers of the Channel Islands and the Isle of Man. He has also the patronage appertaining to the police and to prisons, and the appointment of the various government inspectors of factories, mines, &c., and to several important offices in Scotland. The minor patronage in the hands of the Home Secretary, including numerous appointments to benefices in the Established Church of Scotland, is distributed by him in the ordinary discharge of his duties, and without reference to the crown.[f]

Extent of jurisdiction.

His authority extends over England, Wales, and Scotland, the Channel Islands, and the Isle of Man, and he is the organ of communication between the Cabinet and the vice-regal government of Ireland, for which he is deemed personally responsible; and though he does not interfere actively in lesser matters, he is informed of and advises upon all the more important measures adopted in that country.[g]

Subordinate officers.

The following political officers, all of whom are usually in Parliament, are subordinate to the Home Secretary, i.e. the parliamentary Under-Secretary for the Home Department, the two law officers of the crown, the President and Secretary of the Poor Law Board, the Chief Secretary for Ireland, and the Attorney-General for Ireland, and the Lord Advocate for Scotland.[h]

There are two under-secretaries—one permanent and

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[f] Mr. Gladstone, in Hans. Deb. vol. clxxxv. p. 1118.

[g] See *post*, p. 717. And Murray's Handbook, pp. 163–175 for further particulars respecting the patronage of the Home Secretary, and for an account of the several minor departments, &c., which are more or less directly subject to his control and superintendence.

[h] Rep. on Off. Sal. 1850. Evid. 2737. *Post*, p. 710.

the other parliamentary. The former has charge of the law and criminal business and the general domestic correspondence; the latter conducts the correspondence with Ireland, Scotland, and the Channel Islands, together with the parliamentary business and the correspondence connected therewith.[1] Full particulars in regard to the Home Office, and the several departments subordinate thereto, will be found in the Civil Service Estimates for the year ending March 31, 1869, Class ii. No. 3.

The Foreign Secretary.

Foreign Secretary.

The duties of the Secretary of State for Foreign Affairs are not so varied as those of the other secretaries, but they are nevertheless most important and influential. He is the official organ and responsible adviser of the crown in all communications between Great Britain and foreign powers. The constitution vests in the crown the conduct of all foreign negotiations, and the Foreign Secretary is the minister charged with this duty. He negotiates all treaties, leagues and alliances with foreign states, either directly with their representatives in this country, or through the British ministers abroad. It is his duty to afford protection to British subjects residing abroad, to enquire into their complaints, and to demand redress and satisfaction for any injuries they may sustain at the hands of foreigners. He introduces to his sovereign all foreign ministers accredited to the British government; he enquires into and redresses their just complaints, and maintains their privileges inviolate.

He keeps the ministers of foreign governments informed of any acts of his own government, or of her majesty's subjects, which may be liable to misconstruction, explaining their nature and purport; and it his duty to maintain, as far as possible, a friendly understanding with

[1] Commons Papers, 1847-8, vol. xviii. pp. 278, 279.

foreign powers, while he loses no opportunity of advancing the interests of his own country. On such matters he is in regular and frequent communication with the diplomatic agents of the British government abroad, and receives from them like information and explanations from the governments to which they are accredited.

The Foreign Secretary grants passports to native born or naturalised British subjects going abroad, under the regulations in force concerning the same.

Ministers at Foreign Courts.

Intimately connected with this department of state are the ambassadors, diplomatic agents, and consuls, accredited or employed in foreign countries; in fact, the diplomatic service may properly be regarded as a portion of the Foreign Office serving abroad. They are the eyes, and ears, and tongues by which the British government sees, and hears, and speaks in its foreign relations.[1]

Formerly, it was customary that the representatives of the British crown at all the great courts should be known political adherents of the party in power, and the heads of the principal missions, such as Paris, Vienna, Constantinople and St. Petersburg, were removed on a change of administration at home. But while it is certainly important that the ministers at the great courts should have the political confidence of the government of the day, it has not of late years been usual, as a rule, to change these officers on the appointment of a new ministry. The practice is now conformed to the system which prevails on the Continent, where foreign ministers are considered as being totally independent of any political party, and as the mere organs of the government by whom they are employed. In general, the foreign policy of the British government is so uniform and consistent, that it is not difficult for a minister to carry out instructions from secretaries of state of different political opinions. If, however, he has become

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[1] Murray's Handbook, 176-178. And see p. 178, where the respective positions of the different diplomatic agents are defined, and their duties described. And see *ante*, vol. i. p. 601.

personally committed to a particular policy, a new Foreign Secretary, on taking office, would naturally consult him as to whether he could conscientiously and zealously carry out instructions of a different description, more especially if, being a member of the House of Lords, he should have voted, in person or by proxy, against the incoming administration; because it is necessary for the benefit of the state that there should be reciprocal confidence between the Foreign Secretary and the agents of the crown in other countries.[k]

Foreign policy.

The leading features of our foreign policy are—to promote and extend our commercial relations, not to interfere unnecessarily in the affairs of other countries, and to endeavour, as far as we legitimately can, to promote the good government and prosperity of other countries. The policy of England in this respect is consistent, and, to a certain degree, unchanging; and there is no reason why ministers at the smaller missions, at all events, should not always be able to carry out a policy of this kind.[l]

Private correspondence.

Communications frequently pass between public officers on foreign service and the Foreign Office by means of private letters.[m] This is done in cases where the interests of the public service require that freedom of communication, coupled with mutual confidence and secresy, should be maintained. These letters are strictly secret, and cannot be produced without the consent of the individual from whom they emanated, unless, as sometimes occurs, they are formally made public letters, by a subsequent act on the part of the writer.[n] The rules respecting private correspondence between the Foreign Office and the ministers abroad have been thus stated. No instructions on which any servant of the crown is required to act should

[k] Rep. of Com. on Diplomatic Service, 1861, pp. 89, 104, 179. And see Hans. Deb. vol. clxix. p. 1940.

[l] Rep. com. Dipl. Serv. 1861, Lord Clarendon's evidence, p. 110; and see p. 179.

[m] Hans. Deb. vol. clvii. p. 1182.

[n] *Ante*, vol. i. p. 604. And see Sir James Graham's explanation and justification of this system in his evidence before the Sebastopol Committee, Commons Papers, 1854–5, vol. ix. pt. 3, pp. 273–276.

be sent in a private letter, unless also accompanied by a public despatch. Letters or despatches marked 'private and confidential,' if written in regular form, on large paper, are usually considered as part of the public correspondence, subject, as regards publicity, to the discretion of the Secretary of State; but private letters between public functionaries, although relating to public affairs, if marked 'private,' and written in the usual form of private personal correspondence, are very rarely seen by any one, except the Foreign Secretary himself, and perhaps the Prime Minister; and they ought not to be communicated to the public without the consent of the writer. Copies of all private and confidential despatches are left on record in the office of the embassy, but no record is kept of private correspondence.[o] As a matter of usage, the Foreign Secretary is not bound to place those private letters even in the hands of his sovereign. They may occasionally be communicated to his colleagues in office, but they come so frequently, and the other ministers are so absorbed in their own departments, that they would seldom care to see or have leisure to peruse them. Upon quitting office, the Foreign Secretary takes them with him, and they therefore form no part of the record of our diplomatic transactions or authentic history.[p] Though it is, in fact, 'entirely in the discretion of the Secretary of State to make use of information conveyed in private letters in any way which he pleases,' and to cause such letters to be 'made public and printed,' if he think fit.[q]

The practice of private diplomatic correspondence between the Foreign Secretary and the diplomatic servants of the crown, has been severely animadverted upon in Parliament, but all those who had filled the office of

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[o] Hans. Deb. vol. clvii. pp. 91–102. Rep. of Com. on Diplomatic Service, 1861, pp. 167, 211.

[p] Mr. Disraeli, Hans. Deb. vol. clvii. p. 304; and see pp. 1179, 1181.

[q] *Ibid.* p. 2134.

[r] *Ibid.* pp. 91, 304, 2113. See also Smith's Parl. Remembrancer, 1857-8, p. 29, with precedents respecting private correspondences between English ministers and ambassadors abroad.

Private correspondence.

Foreign Secretary, together with other eminent and experienced public men who were examined upon the subject before the Committee on Diplomatic Service, in 1861, concurred in the opinion that it was necessary, and of great public advantage. This will more fully appear from the following abstract of evidence given before that committee. Lord Wodehouse (the political Under-Secretary for Foreign Affairs), said that he thought it indispensable that there should be a private correspondence kept up between the Foreign Secretary and the heads of missions abroad; but all matters of public importance should be formally recorded in despatches, so that there may be a complete record at the Foreign Office of all the transactions of the government with foreign powers, and a private letter should only be supplementary to a public despatch, containing perhaps particulars of a private nature, which it might be desirable to communicate, although inexpedient to record in a public document. It is often desirable, moreover, for a minister of the crown to communicate freely and confidentially to a foreign minister upon subjects of public political interest at home, so as to put him in possession of English views and opinions on matters upon which it may be essential that he should be informed.[s] Lord Clarendon (ex-Foreign Secretary), said that it would be totally impossible to carry on the business of the Foreign Office with our agents abroad unless by writing private letters. Such letters were never intended to supersede public instructions, but were always, in fact, either commentaries or explanations of public despatches, and were meant to afford information, of mutual use and benefit, which it would be neither desirable nor perhaps proper to make a matter of instruction, or the subject of a public despatch. But the notion that this is made use of to carry on a system of secret diplomacy, and that one set of despatches is written to be really acted upon, and another set to be laid

[s] Rep. of Com. on Diplom. Service, 1861, pp. 96, 97.

before Parliament, is utterly without foundation.[t] Secret and confidential despatches, not being of the nature of private letters, constantly pass between the Foreign Secretary and ministers abroad. Lord Stratford de Redcliffe (the eminent diplomatist), considered it unadvisable to impose restrictions upon the practice of private correspondence. He conceived the use of private correspondence to be to afford a clearer view of the scope and intent of the official instructions, and as intended to convey suggestions, or information, without being trammelled by the formalities of official correspondence, or exposed to the publicity which frequently attends the same. But anything which has the effect of contradicting in private what is made matter of instruction in the public correspondence, or anything that produces an action in public affairs of which the public correspondence affords no trace, is open to objection and liable to abuse.[u] The necessity for private correspondence arises partly from the liability to publicity of everything that is official. The secretary of state must have reasons for wishing ministers abroad to understand exactly the views of the government and the motives of their policy, which could scarcely be stated fully in a public despatch; and the private correspondence enables an agent to put himself more completely in the position of his government. Moreover, this practice is not of recent introduction, but has been uniformly followed, in the recollection of our oldest diplomatists.[v]

[t] Rep. of Com. on Diplom. Service, 1861, p. 106. This was fully corroborated by Lord Cowley (p. 223) and by Lord John Russell, p. 308.

[u] *Ibid.* p. 167.

[v] *Ibid.* pp. 168, 211. The practice of addressing confidential letters to departments of the government is not confined to questions of diplomacy. It is resorted to by officers employed in special services of other kinds, where they have matters to communicate that are either too unimportant, or too peculiar to be made the subject of a public despatch. If either House insists on the production of such confidential documents, the obvious result will be that they will cease to be written. 'The practice only exists on the faith that Parliament will not call for the production of private documents of this kind, written in the expectation that they will be treated as confidential.' (Secretary Sir George Lewis, Hans. Deb. vol. clxv. p. 298.) And see *ante*, vol. i. pp. 279, 280.

Language of diplomacy.

In regard to the language in which diplomatic intercourse is conducted by the representatives of the British government, with the agents of foreign states, it was formerly the practice to use the French language, generally, throughout the European kingdoms. But in the year 1800, by direction of King George III. and Lord Grenville, the then Foreign Secretary, a different rule was adopted, as regards the English court; and the ministers accredited to the court of St. James, by foreign powers, were then begun to be addressed in the English language. It is doubtful whether the practice was at this time extended to communications from British ministers abroad to the ministers at foreign courts. But Lord Castlereagh, when with the army in 1812, wrote in English to foreign sovereigns and their ministers. In 1823, Mr. Canning directed the British minister at Lisbon to use the English language, and in 1826 he gave the same direction to the British minister at Berlin, though he allowed the English notes to be accompanied by a translation.[w] The question was again revived in Russia and Austria in 1831 and 1834, and ruled the same way; it was again so ruled by Lord Aberdeen in 1844; and lastly, in 1851, it was further ruled that translations should not be sent with English notes, as in that case foreign governments would deal with the translation as though it were an original document. And now it is only as an exception, and under very peculiar circumstances, that a British minister would be authorised to accompany an official note with a translation in the language of the country wherein he resided. The reason given for this change, is partly because all despatches of the queen's ministers are liable to be produced in Parliament, and ought therefore to be originally written in the language in which they must be produced; and partly because it was not considered dignified for England to be dependent upon France for the language

[w] See Stapleton's Canning and his Times, pp. 49–54.

of diplomatic communications.[x] A similar rule has been adopted by the German courts, who used formerly to write in French. In Spain, Portugal, and Naples it has always been customary to use the language of the country, and at the present time the exclusive use of French has been generally given up in the diplomatic service abroad. The exception is, in communications from the Porte to the heads of missions at Constantinople, which are generally made in French, although on solemn, or very formal occasions, the Turkish language is used.[y]

Telegrams.

A large portion of the government correspondence is now conducted through the electric telegraph. The despatches are sent in cypher, and the answers thereto communicated in the same form. The government afterwards publishes the substance of these despatches, although in different phraseology to the original draft.[z]

Business in Foreign Office.

In all the great departments of state, with the exception of the Foreign Office, a great deal of the business which comes before them is necessarily decided by the subordinate officials. But it is not considered safe to allow any decision to be given in the Foreign Office without the knowledge and consent of the secretary of state.[a] In point of fact, every paper of any importance that is not of a merely routine character, or upon which any decision is to be founded, or action taken, comes under the personal notice of the Secretary of State.[b]

No important political instruction is ever sent to any British minister abroad, and no note addressed to any foreign diplomatic agent, without the draft thereof being first submitted to the Prime Minister, in order that the pleasure of the crown may be taken thereupon; and if either the crown or the prime minister suggest alterations in such a document, they are either made, or the despatch

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[x] Rep. of Com. on Diplom. Service, 1861, pp. 33, 72.

[y] *Ibid.* pp. 24, 25, 32, 161.

[z] Under-sec. Layard, in Hans. Deb. vol. clxxv. p. 1333.

[a] Earl Russell, Rep. Commons Com. on Education, 1865. Evid. 3022, 3063.

[b] Sec. Lord Stanley, Hans. Deb. vol. cxc. p. 607.

is withheld.[c] The manner in which despatches from and to her majesty's ministers abroad are communicated to the queen, and to the Cabinet ministers generally, has been thus described:—'When the Secretary of State has given his directions on the despatches which arrive from abroad, or has not seen occasion to give orders, the despatches,—and in matters of importance the drafts of answers, when approved by the Secretary of State,—are sent by the senior clerk of the division to the Prime Minister first, then to the queen (in case of important drafts, for her majesty's approval, previously to their being sent off); and they are afterwards circulated among the Cabinet ministers generally. But the boxes, on their way to the Prime Minister, ought to pass, in the first instance, through the hands of the under-secretary of State under whose direct superintendence the correspondence of the several countries is *not* placed, and he is thus enabled to make himself acquainted with matters of political interest recorded in that correspondence.'[d]

In the offices of the other branches of the secretariat the whole of the work passes through the hands of the permanent under-secretary, while the political under-secretary has a general supervision of all. But in the Foreign Office a somewhat different system necessarily prevails. It is there considered essential that the most important work should be in the hands of the permanent under-secretary; because a change of government may occur at any time, and a new secretary of state and political under-secretary may come in who have no special acquaintance with foreign

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[c] Hans. Deb. vol. cxix. p. 105. This rule is more explicitly stated in a memorandum addressed to Lord Palmerston, when Foreign Secretary, in 1850, by command of the queen. See *ante*, p. 213.

[d] From an official statement, explaining in detail the organisation of the Foreign Office, and the system upon which the business is conducted therein. Rep. of Com. on Diplom. service, 1861, pp. 74–76. This memorandum, which was written by Mr. E. Hammond, permanent Under-Secretary for Foreign Affairs, is quaintly entitled 'The Adventures of a Paper in the Foreign Office.' It will also be found in the Report of the Com. on Trade with Foreign Nations, 1864, pp. 73–75.

affairs, so that if large portions of the important business were not advisedly concentrated in the hands of the permanent under-secretary, very serious inconvenience might occur. Moreover, a rapid transaction of business is of greater importance in the Foreign Office than in any other public department, and that is greatly facilitated by the present system of dividing the whole business into two parts, between the two under-secretaries, allotting to the permanent under-secretary decidedly the most important share. Each of the two under-secretaries has certain countries in his charge; and the general supervision and management, under the Secretary of State, of the correspondence of those countries, belongs to the under-secretary in whose division they are placed. At the same time, each sees the business after it has passed through the hands of the other, which insures a sufficient acquaintance with details on the part of both, and the parliamentary under-secretary is kept sufficiently informed, by daily consultation with his colleague, of the course of business, so as to be enabled to answer all parliamentary enquiries.[e]

The Foreign Office is advised on business involving principles of international law by the Queen's Advocate, who is an officer of the Court of Admiralty.[f]

Pursuant to a recommendation of the Committee on Trade with Foreign Nations, in 1864, a new division has been created in the Foreign Office, styled 'the Commercial and Consular division,' consisting, as other divisions in this office, of a senior clerk, an assistant clerk, and such a proportion of junior clerks as circumstances may require. This division is charged with conducting all correspondence on commercial matters with the representatives of foreign powers in England, with the Board of Trade and other departments of her majesty's Government, and with commercial associations and private persons, at home and

Commercial division.

[e] Rep. Com. on Diplom. Service, 1861, pp. 1, 94, 95. But see Hans. Deb. vol. cxc. p. 608.

[f] Hans. Deb. vol. clxxxvii. p. 1108.

abroad, excepting in China, Japan, and Siam, which is to be conducted as heretofore. This division will also, in conjunction with the Treaty department, deal with all matters bearing on negotiations for treaties of commerce. It will likewise carry on the correspondence with British consuls abroad on matters strictly commercial. This new department is placed under the immediate supervision and control of the parliamentary Under-Secretary for Foreign Affairs.[g]

Reports on foreign countries.

The Secretaries of Embassy and Legation are also required to make periodical reports to the Foreign Office on matters of public concern, more especially those relating to the commerce and industry of the countries in which they reside, for the information of her majesty's government. These reports are always laid before Parliament, and are of great value and public interest.[h]

All matters relating to the discipline of the office rest with the permanent under-secretary.[i] And it is a rule of the Foreign Office that only the under-secretaries communicate with the Secretary of State.[j]

Diplomatic service.

The Foreign Secretary has the selection of all ambassadors, ministers, and consuls accredited from Great Britain to foreign powers. He makes all appointments connected with the patronage of his own office. Formerly it was the custom for the head of the mission to appoint his own attachés; but, since the time of Mr. Canning, such appointments have been entirely in the hands of the Secretary of State. If the head of a mission chooses to select his own private secretary, he must pay him out of his own pocket. But though attachés are now appointed by the Secretary of State, they are rarely selected from mere party considerations, and they are required to pass an examination before the Civil Service Commissioners

[g] Minute by Earl Russell (Foreign Secretary) cited in Hans. Deb. vol. clxxvii. p. 1880. And see *post*, p. 667.

[h] Circulars to Foreign Ministers, 1862-66. Commons Papers, 1868, p. 6.

[i] Rep. Com. on Diplom. Service, 1861, p. 50.

[j] Rep. Com. on Trade, 1864, Evid. 2100.

before they can enter upon the performance of their duties, and another examination in the interval between the grant of a commission as third secretary, and that of a commission as second secretary.[k]

Pursuant to the recommendations of the committee of the House of Commons on the Diplomatic Service in 1861, various regulations for the governance of that service were framed by the Foreign Secretary, and revised at different periods from 1862 to 1866. These regulations, which chiefly concern the appointment, examination, salaries and allowances and general duties of the service, and more particularly of the junior members thereof, were laid before the House of Commons, pursuant to an address of March 13, 1868, and will be found in the papers of that session. In June 1868, another paper was presented, being a comparison of the salaries and allowances of her majesty's diplomatic servants under the scales of 1831 and 1868.

Foreign Office agencies.

Ever since the year 1786, it has been customary for some five or six of the principal clerks in the Foreign Office to act as agents on behalf of British ministers, consuls, and other diplomatic servants of the crown abroad, receiving and forwarding to them their salaries, transmitting, when opportunity offered, their private correspondence, and other things they might occasionally require, and generally fulfilling any services suitable for a private and confidential agent. For such service these gentlemen have been allowed to retain a small percentage (usually one per cent. or thereabouts) from the salary of their employers, it being optional, however, with everyone to avail himself of their services or not. The expediency

[k] See Regulations of July 17, 1865, for examination of attachés; presented to House of Commons in 1868. Rep. Com. on Diplom. Service, 1861, pp. 160, 192, 219, 225, 392. This Committee made seven recommendations, for improvements in the routine of the diplomatic service. Six of these were carried out by Government; but the seventh (in favour of an increase in the salaries and allowances of the larger missions) was not approved of. (See Hans. Deb. vol. clxxi. p. 1667.) See also in regard to paid attachés, or as they are now termed, third secretaries to embassies, Rep. Com. Pub. Accts. 1865, Evid. 1830.

of abolishing this practice has been mooted in the House of Commons,[1] and has engaged the attention of various parliamentary committees, from time to time, on the ground that it is inconsistent with the rules laid down for the governance of other public departments. But it has been repeatedly shown that the Foreign Office, from the secrecy and promptitude with which its communications with its several representatives and servants abroad must needs be conducted, is in an exceptional position; that numerous public advantages have arisen, as well to the office itself as to the service generally, from the continuance of this practice; and that, upon the testimony of successive foreign secretaries, and other high public functionaries, for a number of years past, there has been an entire absence of irregularity or abuse in connection with the same. It therefore has remained in operation until now, subject, however, to various regulations that have been framed by the department for the guidance of clerks who are permitted to act in this capacity. Understanding that Lord Stanley, the then Secretary of State for Foreign Affairs, had it in contemplation to abolish the agency system, the clerks engaged therein laid before his lordship a statement upon the subject, which was communicated to Parliament in February 1868, together with a return of the names of the persons for whom the clerks now act as agents, or have so acted at any time during the last five years, and of the aggregate emoluments of the agents during that period. Ultimately Lord Stanley notified the Treasury that he was prepared to abolish the system if adequate compensation were made to the clerks now holding such agencies for the loss they would incur thereby. The Treasury, however, declined to admit that such compensation should be made a charge upon public funds; but they suggested whether it would not be preferable to effect the abolition gradually, by prohibiting the appointment of new agents, and directing

[1] Hans. Debr vol. clxiv. p. 552. *Ibid.* vol. cxcii. pp. 930, 932.

the present agents not to undertake any new duties of this nature. Lord Stanley, on May 16, 1868, expressed his regret at this decision, and reiterated his opinion that if the agencies were abolished the parties were entitled to compensation. The suggestions of the Treasury for the gradual abolition of the agencies would, he apprehended, 'provide a very insufficient and dilatory course for carrying that object into effect.' But failing to obtain the concurrence of the Treasury to his former recommendations in the matter, Lord Stanley intimated, on June 24, that he was obliged to confine himself to laying down 'rules for the eventual abolition of the existing system of agencies when the interests which have grown up under it may be extinguished,' which rules have been communicated to her majesty's diplomatic servants, and laid before Parliament.[m]

Diplomatic expenditure.

It has hitherto been an acknowledged principle that the salaries and pensions payable to the higher class of the diplomatic servants of the crown should be provided for by permanent grants, and not subjected to annual revision by Parliament.[n] Up to 1831 it was the practice to charge all expenditure on behalf of the diplomatic service upon the Civil List. But in conformity with the recommendation of a Committee of the House of Commons in that year, this charge was transferred to the Consolidated Fund. The amount then fixed for the future effective diplomatic expenditure of the country was limited to 140,000*l.* per annum, with a further sum of 40,000*l.* per annum to defray the pensions of retired ministers. A total sum of 180,000*l.* is accordingly placed at the disposal of the Foreign Secretary, for salaries and allowances of this description, the details of which expenditure remain at the discretion of government. But annual accounts thereof are directed to be submitted to Parliament.[o]

[m] See four Papers on Foreign Office Agencies, presented to both Houses of Parliament in 1868, and Hans. Deb. vol. cxciii. p. 1712.

[n] See *ante*, vol. i. p. 471.

[o] Report of Committee in Commons Papers, 1831, vol. iv. p. 339.

Since this arrangement was made, new diplomatic relations have been established with China and Japan, additional duties have been assigned to our consuls abroad for the security and promotion of our foreign trade, and other unexpected services have become chargeable upon the Foreign Office, occasioning a great increase in the expenditure of that department, so that for the year ending March 31, 1869, a vote of upwards of 430,000*l.* was required on behalf of this office in addition to the above-mentioned grant out of the consolidated fund.[p]

Without disputing the care and economy with which the Foreign Office has appropriated the sum entrusted to it for the payment of diplomatic salaries,[q] the importance in a constitutional point of view of bringing the whole expenditure for the diplomatic service under the review of the House of Commons, gave rise to attempts to induce the House to recommend the withdrawal of the permanent grant aforesaid; but so long as Lord Palmerston continued in power these attempts were nugatory.

Thus, on March 26, 1863, it was moved to resolve 'That in the opinion of the House, all sums required to defray the expenses of the diplomatic service ought to be annually voted by Parliament, and that estimates of all such sums ought to be submitted in a form that will admit of their effectual supervision and control by this House.' While admitting the abstract propriety of this plan, the Chancellor of the Exchequer opposed the motion, on the ground that it would impair the independence of the diplomatic service, and would not be productive of economical results. The motion was then put and negatived.[r] On May 26, 1868, a similar motion was made in the House of Commons. It was opposed by the Foreign Secretary (Lord Stanley), on the ground that no practical inconvenience had resulted from the present arrangement. But the weight of argument and opinion evidently preponderated in favour of the motion, which was carried by a majority of four; so that it is probable that very speedily the whole of the diplomatic expendi-

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Act 2 & 3 Will. IV. c. 116, secs. 4–8. Finance Accounts for 1867–8, No. 34.

[p] Civil Service Estimates, 1868–9, p. 13.

[q] See Salaries and Allowances of her majesty's diplomatic servants, as payable in 1831 and 1868, presented to the House of Commons in 1868.

[r] Hans. Deb. vol. clxix. pp. 1936–1947.

ture, and not merely a portion of it, will be subjected to an annual vote in Committee of Supply.[s]

Subordinates.

Besides the political and the permanent under-secretaries at the Foreign Office, there is an assistant under-secretary, with a salary of 1,500*l.* per annum, and a superintendent of the commercial and consular division, with a salary ranging from 700*l.* to 1,000*l.* a year. The entire establishment, including office-keepers and porters, numbers eighty-five persons. This does not include the Foreign Office messengers and couriers, whose allowances and expenses amount to upwards of 26,000*l.* per annum.[t] The cost of the consular establishments, and the extraordinary expenses of her majesty's embassies and missions abroad, are defrayed out of separate votes.[u]

The Colonial Secretary.

The Colonial Secretary.

In 1660 the oversight and direction of the colonies of England was entrusted to a Committee of the Privy Council, called the 'Council of Foreign Plantations,' which was afterwards consolidated with the 'Council of Trade,' and was known as the 'Board of Trade of Plantations.' In course of time this Board underwent many alterations, to which it is unnecessary to advert. But after the loss of a large portion of the North American colonies, an entire change of system was determined upon. The Plantation Board, as then constituted, was abolished, and the remaining colonies were placed under the charge of the Secretary of State for the Home Department. But on the breaking out of the revolutionary war, at the close of the last century, it became necessary to create a new Secretary of State for War in 1794, and in 1801 the business of the colonies was consolidated therewith. The department was then permanently established as the office of the Secretary of State for War and the Colonies. After the return of

[s] Hans. Deb. vol. cxcii. pp. 927–939.

[t] Civil Service Estimates, 1868–9, Class II. No. 4.

[u] *Ibid.* Class V. Nos. 5, 6, 7.

peace the colonial business absorbed the attention of the department, and became so engrossing and important, that upon the breaking out of European war again, in 1854, it was considered advisable to transfer the conduct of military affairs to a new secretary, then appointed, for the exclusive management and control of war business.[v]

His duties.

The duties of the Colonial Secretary are now restricted to the oversight and government of the numerous colonial possessions of the British crown. The administration of the different laws and customs under which these colonies, scattered over the face of the globe, are governed, and the varied interests by which they are affected, are subject to the especial supervision and control of this officer. He watches over their interests and directs their government in conformity to the principles of colonial responsibility which have recently been adopted as the basis of colonial rule by the parent state. He apportions the troops necessary for their internal or external protection and defence; and he co-operates with the Secretary of State for War for this purpose.

The authority of the Secretary of State for the Colonies is now chiefly exercised in the appointment of governors over the various dependencies of the crown, and in the sanction or disallowance of the enactments of the colonial legislatures. In matters of imperial concern, or which may affect the well-being of the colony as a part of the empire, he corresponds with the colonial governors, communicating the views and opinions of the imperial authorities, and making such recommendations or suggestions as may be expedient to guide or assist the deliberations of the colonial councils, and promote the welfare of her majesty's colonial subjects. To him is usually assigned the responsibility of devising and submitting to the Imperial Parliament laws peculiarly affecting the colonies, such as enactments constituting colonial legislatures, or regulating the sale of crown lands in the colonies, and enactments for the protection of emigrants.[w]

[v] Murray's Handbook, p. 181. [w] Cox, Inst. p. 675.

The Privy Council Committee for Trade, wherein, as we have seen, the business relating to the colonies was originally transacted, still retains a share of the same. Though its colonial jurisdiction has been long ago abolished, yet the committee, being composed of individuals of eminence, some of them, usually, having had large experience in the consideration of colonial questions, it has been recently considered advisable to revive in part its ancient functions, and to authorise the Secretary of State for the Colonies to have recourse to it for advice and assistance in the settlement of certain important colonial questions. Upon such occasions, the Committee for Trade, of which the Colonial Secretary is an *ex-officio* member, is summoned, he attends and invites their assistance to the matter in hand. The questions submitted to this committee have been of the following description: Questions relating to the constitutional system proposed to be given to the colonies of the Cape of Good Hope, and in Australia, and to the rights of the respective branches of the local government therein, under existing forms of government; or questions arising out of personal controversies between imperial and provincial officers, in a colony; or respecting internal improvements, or matters of policy affecting great local interests therein.[x] In all such cases resort has been had by the Colonial Secretary to the Committee of Council for Trade, by whom the questions have been carefully examined and reported upon, in such a shape that the advice given, together with the reasons for the same, could be submitted to Parliament, the country, and to the colonies, in proof that the government had bestowed the best possible attention to the investigation and determination of the questions at issue.

Trade Committee of Council.

The tendency of the imperial policy, for many years past, has been to favour the gradual introduction of

[x] Rep. on Off. Sal. 1850, Evid. 761–764, 875. Commons Papers, 1847–8, vol. xviii. p. 493. Murray's Handbook, p. 182. And see further *post*, p. 663.

Responsible government in the colonies.

responsible government into all the British colonies.[y] The principal obstacle to the grant of representative institutions has been the existence in certain of the British dependencies of a large native population, incapable of exercising with advantage the privileges of self-government; whilst the European population is small, and often fluctuating. The interests of the European settlers might often conflict with those of the aboriginal races, and it would accordingly be unjust, if not impossible, to establish in such colonies representative institutions framed after the British model. Of these colonies India, Ceylon, the Mauritius, and Natal, are striking examples. They are governed by a governor and council, and it is necessary (except so far as India is concerned) that resort should be had, in all new or extraordinary cases, to the advice and direction of the Colonial Office; while, in respect to the colonies wherein responsible government has been established, the correspondence with the Colonial Office has considerably diminished, and the labours of the Colonial Secretary have proportionably decreased.[z] The direct oversight of the queen in colonial affairs is not exercised to the extent to which it is given to the Foreign relations of the British crown. Much of the correspondence of the Colonial Office is of a routine description, not involving any new or important principle. Accordingly, while her majesty 'is desirous to know all important decisions affecting the Colonial Office, every particular despatch need not be submitted to her.'[a]

Patronage of Colonial Secretary.

The Secretary of State for the Colonies is directly responsible for every act of the governor of any of the colonial dependencies of the British crown; and generally he has the appointment of all these officers, subject to the approval of the Prime Minister, whose opinion, especially in the case of the more important governorships,

[y] Rep. on Off. Sal. 1850, Evid. 1474, 1477. Hans. Deb. vol. cxxxi. 1476. p. 243.

[z] Rep. on Off. Sal. 1850, Evid. [a] Hans. Deb. vol. cxix. p. 251.

would have much weight.[b] Colonial governors are appointed by letters patent under the great seal, and they act under the immediate directions and instructions of the Colonial Secretary. The nature and extent of the powers entrusted to governors differ essentially in the different colonies. In the colonies where responsible government has been established, the direct authority of the governor is very limited and circumscribed, his position being somewhat analogous to that of the sovereign in the parent state; but with this important distinction, that he is an imperial officer, and is the link of connection and communication between the colony and the mother country. In other colonies, the governors exercise a much larger share of authority, differing, however, in every case according to the peculiar form of the colonial constitution.

The colonial patronage in the hands of the Colonial Secretary is nominally very considerable; although, since the introduction of responsible government, as a rule all appointments in the colonies where self-government has been established are made upon the recommendation of the Colonial Executive Council. In the other colonies, however, the patronage of the Secretary of State is much more extensive. The colonial and governors' secretaries are technically appointed by him, although usually on the recommendation of the governor himself. In the colonies wherein Crown nominations to the episcopal office continue to be made, bishops are appointed upon the recommendation of the Secretary of State for the Colonies, after consultation with the Archbishop of Canterbury.[c] Until about the year 1850, it was usual to fill up vacancies in colonial bishoprics by sending out clergymen from England, because there were not, in the colonies, clergymen eligible for such appointments, but thenceforth, in conformity to the principle which governs civil appointments, it was authoritatively stated that colonial clergy

[b] Rep. on Off. Sal. 1850, Evid. 1478. And see *ante*, p. 432.

[c] *Ibid.* 1478–1490. Hans. Deb. vol. clxx. p. 990. But see *ante*, vol. i. p. 308.

would have the preference, whenever suitable men could be found amongst them for the office.[d] Judicial appointments, in the case of the principal colonies, are in like manner invariably filled up from the colonial bar; in smaller colonies, either from home, or from some other colony. Other civil or ecclesiastical appointments are generally made upon the recommendation of the governor or the bishop; so that while the higher class of offices in the colonies are generally filled up by warrant under the royal sign manual, in practice, in almost all the colonies the governor's recommendation is taken as a matter of course, and the persons selected are from amongst the residents in the colony.[e]

Colonial Governors.

Governors of colonies are appointed under the sign manual or the great seal during pleasure; and are removable at any moment, without notice or cause assigned, by authority of the crown. They usually retain their appointments for a period of six years only, a limitation of time which was first fixed by Mr. Secretary Huskisson; it being of the greatest possible importance, to insure impartiality of conduct, that a governor should be entirely unconnected with the colony over which he presides. In some cases, however, governors are permitted to continue for longer periods, at the discretion of the Colonial Secretary.[f] The salary of a colonial governor is usually defrayed out of colonial revenues, except in the case of some of the smaller colonies, where it is paid from the revenues of the United Kingdom, and annually voted by Parliament. But it is important that a governor should always be independent of the local legislature; and it is accordingly customary to provide, where the salary is defrayed out of the colonial chest, that no governor shall

[d] Hans. Deb. vol. cxxxiv. p. 180. And see, as regards Canada, *ibid.* vol. cxxxvii. p. 1403. Soon after the first appointment of colonial bishops in the West Indies, during Mr. Pitt's administration, it was agreed to allow them to be styled 'my lord;' and since then the practice has become invariable. Rep. on Off. Sal: 1850, Evid. 1494.

[e] Rep. on Off. Sal. 1850, Evid. 1469, 1483-1487.

[f] *Ibid.* Evid. 1563. Mirror of Parl. 1836, p. 926.

assent to an act raising his salary, and that no legislature shall be empowered to reduce it, without the consent of the imperial authorities. It would be better if the salaries of governors were always paid by the mother country; as colonists are apt to complain of salaries which are really not more than sufficient to secure the services of suitable persons from England. In colonies having representative governments there is no school for a governor so good as the House of Commons, yet the rate of salaries is so low, considered in reference to the amount of state and hospitality which such an officer must maintain, and the many calls upon his purse for benevolent purposes, that it is difficult to induce a gentleman of any standing or position in the House of Commons to accept such an appointment. In fact, in many instances, the salary is so inadequate to support the dignity of the office, that it would scarcely suffice without the assistance of private means, and the governor is tempted to diminish the hospitalities which, rightly considered, form a very important element in his duties as a servant of the crown. For it is a great advantage in colonial society, that there should be frequent opportunity, through the hospitalities at government house, of bringing together persons of different views and opinions, and of thereby exercising a conciliatory influence over the minds of leading men, of opposite parties, in the presence of the queen's representative.[g]

The position of colonial governor was materially improved by the Acts 28 & 29 Vict. c. 113, and 31 & 32 Vict. c. 128, authorising the Secretary of State to grant them pensions after a certain term of service.

Colonial laws.

All colonial enactments are brought under the consideration of the Colonial Secretary, by whom they are referred to legal officers, whose duty it is to examine every act and report upon it, for the purpose of discovering any

[g] Lord Grey's evidence in Rep. on Off. Sal. 1850, Evid. 1557–1562. And see a discussion as to the expediency of requiring all the colonies to pay the salaries of their own governors, in Hans. Deb. vol. cxlvi. p. 902.

defect, and of determining the expediency of allowing or disallowing the same. Unless there is some special reason to the contrary, Acts which merely relate to the internal affairs of a colony are seldom if ever disallowed, but are at once confirmed, upon report of the examining officers. Very often, however, technical errors or defects are found in colonial statutes, which are brought under the notice of the governor by the Colonial Secretary, and are generally amended without delay by the colonial legislatures. If the defect be not serious, the Act is permitted to remain in operation, pending the action of the local legislature, but it is not meanwhile formally submitted to the queen for confirmation or disallowance.[h] A large number of colonial laws annually pass under the review of the examining officers. The great bulk of them require, of course, a very cursory inspection, but occasionally questions arise of considerable nicety and importance. Formerly the duty of examining colonial laws was performed by the Colonial Land and Emigration Board, and they still examine and report on such laws as may relate to land or emigration.

Business of the office.

The business of the Colonial Office is conducted on a very admirable system. The office is divided into five branches, each of which takes cognizance of the affairs of a distinct group of colonies. On the arrival of the mails, the despatches are opened by an officer specially charged with this service; and they are handed over to the branch to which they respectively belong. They are then first read by the chief clerk of the branch, who notes upon the despatch his opinion concerning it; it is afterwards sent to the permanent Under-Secretary, who also reads and makes a minute upon it. It then proceeds to the parliamentary or political Under-Secretary, who does likewise. It is then sent for the consideration of the Secretary of State, who deliberates upon the despatch, with the advantage of the

[h] Rep. on Off. Sal. 1850, Evid. 1500-1510. And see Hans. Deb. vol. cxxiv. pp. 562, 574, 717.

minutes made by the officers through whose hands it has previously passed. The Secretary then forms his own decision, making a separate minute thereof, which either becomes the subject of a despatch in reply; or, if the matter is very important, the Secretary writes the despatch himself, or makes a brief minute, stating the sense in which it is to be answered, upon which a draft letter is prepared for his approval, which, having received his initials, is copied and forwarded to the colony. Thus everything is brought under the direct notice of the Colonial Secretary.[i] It is of great consequence that the responsible head of a department should keep the reins of government in his own hands, and permit nothing important to be done without his knowledge and approval.

The Colonial Secretary requires of his employés that the necessary work of the department shall be faithfully and punctually performed. Once a fortnight he receives a return of the business in arrear, from which he can see whether anything has been neglected. The duty of distributing the work among the subordinate clerks rests entirely with the permanent Under-Secretary.[j]

Patronage.

The appointment of the officers and clerks of his own office and in the office of the Colonial Land and Emigration Commission is in the patronage of the Colonial Secretary, who has also the appointment of the queen's messengers, alternately with the other Secretaries of State.[k]

The Colonial Land and Emigration Board.

Land and Emigration Board.

This department is a subordinate branch of the office of the Colonial Secretary. It is of comparatively recent establishment. The germ of it is to be found in a Commission appointed in 1831, by Lord Ripon, then Colonial Secretary, to enquire into the question of emigration. Of this commission Mr. Elliot was secretary, and after the

[i] Rep. on Board of Admiralty, 1541, 2880. 1861, p. 180.

[j] Rep. on Off. Sal. 1850, Evid.

[k] Murray's Handbook, p. 183. See *ante*, p. 499.

close of the enquiry, he was charged, as an officer of the colonial department, to conduct the correspondence connected with emigration. In 1837 he was named Agent-General for Emigration. In 1840, the first board was appointed, under its present title, consisting of Mr. Elliot and two other commissioners. In 1846, the duty of reporting on colonial laws, which had previously been performed at the Colonial Office, was transferred to the commissioners; and (a vacancy having occurred at the board) a legal member was appointed for this service. In 1847 the board was reorganised, and was specially charged:—

Its duties.

1st. To consider all questions relating to colonial lands which may be referred to them by the Secretary of State, to report on claims to lands, draw up leases for minerals, and draft orders in council relating to land or emigration. As recent examples of these duties may be mentioned certain large claims of the Hudson Bay Company, the working of the coal mines at Labuan, the complex land dispute in Prince Edward Island, the mode of dealing with the Guano islands, &c.

2nd. To deal with all matters relating to the conveyance of emigrants to the various colonies of Great Britain, especially Australia. For this purpose they administer, and from time to time reconstruct the Passengers' Act, which regulates the emigration of the poorer classes, when conducted at their own cost.

3rd. To diffuse information respecting the British Colonies, in aid of the settlement thereof.

4th. To report on all colonial laws and ordinances referred to their consideration, especially such as relate to land or emigration.

The duty of reporting on colonial land questions was formerly very onerous. But of late years, the management of the crown lands has been generally transferred to the colonial legislatures; so that the duties of the board in this respect are now considerably reduced.

Emigration from the United Kingdom has also materially decreased of late years; but the commissioners have been charged with the administration of the Passengers' Act (18 and 19 Vict. c. 119, as amended by 26 and 27 Vict. c. 51), a duty which involves a considerable correspondence with the emigration officers at the several outports, and with all others engaged or interested in emigration.

The commissioners have also to watch or conduct the immigration from India, Africa, and China into Mauritius and the West Indies; and in this connection to consider and report on the various schemes connected with its management, and on the laws by which the relations of masters and servants are governed in those colonies.

The Board now consists of two permanent commissioners, the number having been reduced pursuant to the Report of the Commons' Committee on Public Offices, in 1853. All ordinary business is disposed of by the Board on their own responsibility, general directions, only, being received from the Colonial Secretary, who is consulted by the commissioners upon any difficult or important matter.[1] The commissioners report annually to the Secretary of State for the Colonies on emigration, colonial land questions, and whatever has come before them during the year, and their report is communicated to Parliament.

Its proposed abolition.

In view of the consolidation and improvement of the transport service (of troops, convicts, emigrants, stores, &c.), at present performed under the direction of various public departments, and the transference of the same to a new office, to be placed under the sole control of the Lords of the Admiralty, the abolition of the Emigration Board has been recommended. Should this recommendation be adopted, the transport of emigrants will devolve upon the new Transport Office, and the remaining functions of the Emigration Board will be transferred to the

[1] Rep. on Off. Sal. 1850. Evid. 1464. Rep. on Public Offices, 1854, vol. xxvii. pp. 293-306.

Colonial Office, to which they legitimately appertain.[m] The government, however, have since expressed their decided objection to this proposal, so far as the abolition of the Emigration Board and the transference of its powers to other departments is concerned, being of opinion that the plan now in operation is satisfactory to all parties, and especially to the colonial interests.[n]

The Chairman of the Emigration Board receives 1,200*l.* a year, and the second Commissioner 1,000*l.* The staff of the office is but small.[o]

The Secretary of State for War.

Secretary for War.

This branch of the secretariat is of very recent origin, at least as a distinct and independent department.

For obvious reasons, which have been already noticed in a previous chapter,[p] the army has always been regarded with greater constitutional jealousy, in England, than the navy; and the command of the army has, by uninterrupted usage—until a comparatively recent period—been more immediately in the hands and under the control of the crown, than of its responsible advisers. As respects the navy, ever since the Act of 1690, authorising the placing of the office of Lord High Admiral in commission, the delegation of the royal authority in the government of the navy has been absolute and entire; and the responsibility for the administration thereof has, from the epoch of the Revolution, been considered as resting upon the First Lord of the Admiralty. But it was not until the commencement of the present century that the principle was fully conceded that the control of the army must be exercised by the crown through the medium of a responsible minister.[q]

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[m] Rep. of Committee on Transport Service, 1861, pp. v.-vii.

[n] Hans. Deb. vol. clxv. pp. 703, &c., 854. And see Correspondence between the Admiralty and Colonial Office on this subject, in Commons Papers, 1862, vol. xxxiv. p. 901.

[o] Civil Service Estimates for 1868-9, Class V. No. 10.

[p] See *ante*, vol. i. pp. 320-324.

[q] See *ante*, vol. i. p. 324.

Until the recent change in the organisation of the War Department, the direction and responsibility in military affairs, although formally centred in the administration for the time being, was practically divided between the Commander-in-Chief at the Horse Guards, the Master-General, and the Board of Ordnance, the Secretary-at-War, and the Secretary of State for War and the Colonies.[r] The working head of the War Office at this time was the Secretary-at-War, an officer of very subordinate position, who administered a portion of the affairs of the army at home, while the Colonial Secretary had the sole management of all troops directly they left the shores of England. The extensive Ordnance Departments were under a separate head,[s] and the Commissariat was attached to the Treasury. The position of the Commander-in-Chief was anomalous and unsatisfactory. Departmental reform.

On the declaration of war against Russia, in 1854, the opinion which had for some time prevailed, that a more direct and efficient control should be exercised by the government in military affairs,[t] led to the separation of the duties of War Minister from those of Colonial Secretary, and the appointment of a Secretary of State for War, in whose hands should be concentred the supreme and responsible authority over the whole military business of the country, heretofore transacted by various independent departments. This important change was effected by a

[r] See Cox, Inst. 708.

[s] For an account of the constitution and powers of the Board of Ordnance before its amalgamation with the office of Secretary of State for War, see Commons Papers, 1854, vol. xxvii. pp. 307–350.

[t] See a speech of Sir William Molesworth in the case of Lord Brudenell, in Mirror of Parl. 1836, p. 1306. A plan for the consolidation of the different departments connected with the civil administration of the army was recommended by a Royal Commission in 1837 (see Commons Papers, 1837, vol. xxxiv. pt. 1) but was not carried into effect, owing to the opposition of the Duke of Wellington thereto. His grace's objections were chiefly on constitutional grounds. He demurred to the proposal to entrust to the Secretary-at-War the concentrated powers and responsibility which should only be exercised by a principal secretary of state. These objections induced the government to refrain from any attempt to carry out the suggestions of the commissioners. Hans. Deb. vol. cxxxi. p. 223, &c. *Ibid.* vol. cxxxiii. p. 1270.

Appointment of a War Secretary.

declaration in Council, on June 12, 1854;[u] but it was unaccompanied by any order in Council, minute, or other document, defining the special duties of the War Department. The Cabinet did, indeed, contemplate a speedy and effectual organisation of the new office, but the press of business consequent on the disasters which befell the British army at that period, occasioned the indefinite postponement of these arrangements. Meanwhile, however, the Duke of Newcastle, who, on being relieved from the charge of the colonies, assumed the charge of the War Department, was at no loss for proper authority. As Secretary of State, he undoubtedly possessed, before as well as after the change, ample powers over the different branches of the military service, and could issue such orders as he thought fit for their guidance and direction. The mere division of the secretariat into separate departments made no difference in that respect, for the control of the crown over the army, which is constitutionally exercised through a Secretary of State, has always been acknowledged and supreme.[v] Much remained to be done, by consolidation and otherwise, to perfect the internal organisation of the new office, and to establish the mutual relations and interdependence of the different departments absorbed into the same. But all such reforms were unavoidably postponed, until the return of peace should admit of careful attention being directed to the subject.[w]

The Duke of Newcastle.

On the first formation of the new secretariat, the Duke of Newcastle made choice of this office, in place of continuing in charge of the colonies, because he was desirous of applying himself exclusively to carrying out, with vigour, the plans he had already devised for the prosecution of the war. The grievous mismanagement attending the conduct of the Crimean campaigns at the outset,

[u] Hans. Deb. vol. cxxxv. p. 318. *Ibid.* vol. cxxxvi. p. 425; vol. cxxxviii. p. 736.

[v] See Hans. Deb. vol. lxi. p. 1042.

[w] Rep. of Com. on Army before Sebastopol, 1854–5, vol. ix. pt. 2, pp. 113, 184, 197; and pt. 3, pp. 295, 369, 423.

is a matter of history. The numerous acts of maladministration, in reality the result of a combination of untoward circumstances, were too readily attributed to the want of skill and energy on the part of the War Minister; and Lord John Russell, then a member of the Cabinet, opened a correspondence with Lord Aberdeen, the Prime Minister, in which he suggested that the Duke of Newcastle should be removed from office, and replaced by Lord Palmerston, who, he contended, was the only member of the government properly qualified to prosecute the war with success, on account of his inherent mental vigour and experience in the details of military administration; and last, though not least, from the fact of his being a member of the House of Commons. For Lord John Russell insisted that it was necessary that the Secretary of State for War, like the Chancellor of the Exchequer, should always be in the House of Commons, and that the adoption of a rule to that effect was open to no constitutional objection. At the same time he proposed that the office of Secretary-at-War should be abolished, and that the War Minister should himself move the estimates, and represent his department in the popular assembly. This latter arrangement has since been carried out. But Lord Aberdeen refused to admit the principle that it was absolutely necessary for the Secretary of State for War to be invariably a member of the House of Commons, viewing it as objectionable in principle, and likely to be inconvenient in practice. He thought it might often be desirable to appoint a military man to this office, and extremely probable that a man possessing the necessary qualifications might occasionally be found in the House of Lords. He considered that the office should stand on the same footing as that of the First Lord of the Admiralty, who may be either a peer or a commoner, as the public interest may require. So far as the personal question was concerned, the Premier was not of opinion that any change was called for, as he was quite satisfied with

the manner in which the War Department had been conducted by the Duke of Newcastle. The correspondence terminated with a declaration from Lord John Russell that he must submit the matter to the Cabinet, as he was satisfied that the office of War Minister ought, for the present at least, to be held by a member of the House of Commons.[x] But, in point of fact, his lordship never did appeal to the Cabinet, and the Premier concluded that he had changed his mind on the subject, until after the meeting of Parliament, when Lord John Russell retired from the ministry, giving as his reason that a motion was about to be made in the House of Commons for an enquiry into the disasters which had befallen the army before Sebastopol, and that he could not concur with the government in opposing enquiry, as he was not himself satisfied with the manner in which the war had been conducted.[y] The retirement of Lord John Russell was speedily followed by the defeat of the ministry on the motion in question, and by their consequent resignation of office, on January 31, 1855. The new War Secretary was Lord Panmure, also a member of the House of Lords, who held the office for three years; since then it has been filled by a member of the House of Commons.

Powers of a War Minister.

In proof of the necessity for a concentration of power in the direction of military affairs in the hands of one man, at all events during the continuance of hostilities with a foreign power, Lord John Russell makes the following remarks, in the correspondence above referred to:—In the prosecution of a war it is clear either that the Prime Minister must be himself the active, moving spirit of the whole machine, or else the War Minister must have ample authority to control other departments. 'A Cabinet is a cumbrous and unwieldy instrument for carrying on war; it can furnish suggestions or make a decision upon a measure submitted to it, but it cannot administer.'

[x] See *ante*, p. 223. Rep. of Com. on Army before Sebastopol, vol. ix. pt. 3, pp. 359–364.

[y] *Ante*, p. 225.

To do this effectually you must have 'a War Minister of vigour and authority.' Elsewhere he says, 'In order to carry on the war with efficiency, either the Prime Minister must be constantly urging, hastening, completing the military preparations, or the Minister of War must be strong enough to control other departments. Every objection of other ministers, the plea of foreign interests to be attended to, of naval preparations not yet complete, and a thousand others—justifiable in the separate heads of departments—must be forced to yield to the paramount necessity of carrying on the war with efficiency of each service and completeness of means to the end in view. This great duty may be performed either by the Prime Minister himself, or by a separate War Minister. We have examples of both. Lord Godolphin, on the one hand, as first minister of the crown, superintended the campaigns of Marlborough; Lord Chatham, when Secretary of State, guided the operations of the Seven Years' War. Again, the glorious termination of the war against Napoleon was directed by the Secretaries Castlereagh and Bathurst, under the premiership of Lord Liverpool.'[1]

Controlled by the Cabinet.

In point of fact, however, during the Crimean war, as appears from the evidence of the Duke of Newcastle, while the War Secretary had the responsible direction and control in everything, yet the Cabinet were largely consulted, and exercised considerable influence. The selections for the post of Commander-in-Chief in the Crimea, and of two or three of the generals of division, were submitted by the Secretary of State for War, to the Cabinet for their approval; the names of other commanding officers he did not think it necessary to submit; but all important operations, the number of troops to be sent out, and so forth, 'were, of course, submitted to the Cabinet.' He also communicated to them every despatch he received from the commander of the forces in the Crimea, and informed

[1] Rep. of Com. on Army before Sebastopol, pp. 360-363.

them of the steps he was about to take in consequence thereof, so that they had an opportunity of dissenting from the same, if they thought fit; otherwise, they shared the responsibility of his acts. This practice he followed so long as the members of the Cabinet remained in London; but, when they separated for country excursions, the despatches received were not circulated amongst them until their return to town.[a]

It is distinctly understood, that whenever circumstances render it necessary to send troops abroad, the consideration of the measure devolves, in the first instance, upon the whole Cabinet. Their decision is communicated by the Secretary of State for War to the Commander-in-Chief, with instructions to take the queen's pleasure as to the regiments to be selected for the service. The appointment of a general officer to command a force for active service is made by the Cabinet, and communicated by the Secretary for War to the Commander-in-Chief, with instructions to take the queen's pleasure thereupon. The Secretary for War, however, is himself considered responsible for any such selection; and also, to a considerable degree, for the selection of officers to hold important subordinate commands, inasmuch as all general and superior staff-officers recommended by the Commander-in-Chief for commands or appointments, must be submitted by him for the approval of the Secretary for War.[b]

Supremacy of War Minister.

During active service, the Secretary of State for War must have entire control over the operations, as bearing upon the conduct of the Commander-in-Chief, of the Admiralty (notwithstanding that department is presided over by another Cabinet minister), of the Commissariat, of the Transport Board, and even of the Treasury itself; all these must be, to a certain extent, superintended by him; and it is his duty to combine and concert together the

[a] Rep. of Com. on Army before Sebastopol, vol. ix. pt. 2, pp. 208–211.

[b] Rep. on Mil. Organis. 1860 (Com. Papers, vol. vii.), Appx. p. 576.

various powers and authorities of all those different departments, in such a manner as to conduce to the proper management of the military operations of the country. This was the opinion of Lord Derby, as expressed in the House of Lords in 1856, and it embodies, in the main, the present practice.[c] This statement was acquiesced in at the time, by Earl Grey, with the qualification that, in his opinion, the Prime Minister, or the Cabinet collectively, ought to be regarded as the chief director on such an occasion; acting, however, through the Secretary for War, as above described.[d] To a similar effect, it was stated by the Duke of Newcastle, in evidence before the Transport Committee, in 1860, that considerable alterations take place in the relative position of the departments of state, upon the breaking out of a war. The Admiralty is a totally independent office in time of peace, no secretary of state interferes or controls it in any way whatever; but, the instant war is declared, the whole thing is changed, and the Board of Admiralty comes under the immediate and entire control of the Secretary of State for War. Thenceforward, so long as the war continues, the operations of the War Office and of the Admiralty, and the directions of the movements, both of the army and navy, become a part of the special duty of the Secretary for War. And this, he declared, was no new system, but that it had always been so.[e] This must not be considered, however, as interfering with the direct responsibility of the Admiralty for the conduct of naval operations during a war; or as limiting the responsibility of the Board of Admiralty in regard to the details of the naval service, which continue to be transacted, as in time of peace, without reference to any other department.[f] The Secretary

[c] Hans. Deb. vol. cxl. p. 1026. Rep. of Com. on Mil. Organis. 1860, pp. 382, 386.

[d] Hans. Deb. vol. cxl. p. 1046.

[e] See examples cited in Rep. of Transport Com. 1860, pp. 143, 233. See also the Duke of Newcastle's evidence before the Sebastopol Com. 1854–5, vol. ix. pt. 2, p. 112.

[f] Rep. of Transport Com. 1860, pp. 204, 207. And see Sir James Graham's evid. before the Sebastopol Committee, 1854–5, vol. ix. pt. 3, p. 260.

for War gives his instructions to the Admiralty, and it is the duty of the Board to see those instructions properly carried out.[g]

Having discussed the principle of control and responsibility in war matters, involved in the establishment of a separate branch of the secretariat, to take charge of military business, and pointed out the customary limit and extent of interference, by the Cabinet collectively, with the functions of the War Secretary, we will now consider the relative position and duties of the Secretary of State for War, and of the Commander-in-Chief.

Relative powers of War Minister and of Commander-in-Chief.

It was on June 12, 1854, as has been already observed, that the Declaration in Council was made, appointing a fourth secretary of state, to be styled the Secretary of State for War. But it was not until May 18, 1855, that letters patent were issued, formally conferring this office upon Lord Panmure. Shortly afterwards, the separate departments of the Ordnance and the Commissariat, together with the office of Secretary-at-War, and the control of the militia, including the yeomanry and the volunteers, were consolidated, and committed to the charge of the new War Secretary.[h] The letters patent were necessarily framed in general terms, conferring upon him the administration and government of the army and ordnance; including all matters relating to the pecuniary affairs, establishment, and maintenance of the army. In addition to this patent, however, there was issued, on the same day, a supplementary patent, revocable at pleasure, which contained a reservation of the general powers granted to

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[g] Rep. of Sebastopol Com. 1854–5, vol. ix. pt. 2, p. 150.

[h] And see the Act 18 and 19 Vict. c. 117, vesting the estates and powers of the Board of Ordnance in the Secretary for War. The militia, however, are still subject to the lords-lieutenant of counties; and the War Office never interferes with a militia regiment (as, for example, to prescribe routes for them when on the march) except through the lieut.-colonel. (Hans. Deb. vol. clxxxviii. p. 87.) As regards the volunteers, see the Report of Commissioners appointed to enquire into the condition of the volunteer force. Commons' Papers, 1862, vol. xxvii. p. 89. And see *post*, p. 554.

the Secretary for War: as respects (1) the military command and discipline of the army, and (2) appointments to, and promotions therein; so far as the same may be exercised by the crown through the Commander-in-Chief, for the time being.[i] A supplementary patent, of this description, was issued, in the case of every appointment to the office of Secretary of State for War, up to that of Sir G. C. Lewis, in 1861, when it was dispensed with, and an official memorandum, defining the respective duties and authority of the Secretary for War, and the Commander-in-Chief, was substituted in its place.[j]

Although expressly designed to limit and define the respective powers of the War Secretary and of the Commander-in-Chief, these supplementary patents proved to be alike unsatisfactory and objectionable. The committee of the House of Commons, in 1860, on military organisation, took much evidence on this point, and embodied the same, with their own views on the subject, in a report, which was ably drawn up by their chairman, who was that veteran administrator, Sir James Graham. As the question is one of considerable importance, it may be profitable to notice the conclusions arrived at by the committee, and the principal points established by the evidence.

It has not been customary to make any limitation or reservation of powers in the patents of secretaries of state. As we have already seen,[k] the receipt of the seals of office from the hand of the sovereign in Council confers the office, with all the powers thereunto properly belonging, even before the issue of the patent. The present is

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[i] Rep. on Mil. Organisation, 1860, p. 452.

[j] See *post*, p. 548. This document would have been of much service in determining the delicate questions involved in the relations between these two high functionaries; but unfortunately it is lost. We are informed, by the return to an address of the House of Commons, dated August 10, 1866, respecting the patents of the Secretaries at State for War, that this memorandum 'has not been traced since its possession by the late Right Hon. Sir G. C. Lewis.' Commons Papers, 1866, vol. xli. p. 877.

[k] See *ante*, p. 494.

the first occasion of the issue of a supplementary patent, restraining the full exercise of the powers conferred by the original patent. It is very doubtful whether any supplementary patent was necessary. Such a document merely indicates the pleasure of the crown as to the ordinary exercise of the powers of the Secretary of State for War, forbidding him to interfere with the routine of military command and discipline, or the distribution of army patronage; authority in respect to which has been vested in the Commander-in-Chief. The Commander-in-Chief himself is not now (as heretofore) appointed by letters patent, but by a letter from the Secretary of State for War, notifying him of the royal pleasure that he do serve as General Commanding-in-Chief of the royal forces, and do obey such orders as he shall receive from her majesty, or any other his superior officer. The terms of this appointment, coupled with the constitutional responsibility which necessarily attaches to the office of Secretary of State, in regard to all matters where he is the minister by whom, and through whom, the commands of the queen are received and conveyed, materially affect the consideration of this question.

Supremacy of civil over military authority.

The sovereign is the recognised supreme head of the army, and generalissimo of all the national forces, both by land and sea, and everything done in connection with them must receive the sanction of the crown. At the same time, the queen cannot act, except through a responsible minister. In the control of the army, this responsible minister is clearly not the Commander-in-Chief, for he is not a parliamentary officer, or a member of the Cabinet. He receives only a delegated and subordinate authority, and is not ordinarily removed from office upon a change of ministry. The responsible minister is, undeniably, the Secretary of State, for through him the royal will is declared and exercised, and his counter-signature, making himself responsible for the act of his sovereign, is appended to every commission in the army, and is necessary to give

validity and effect to the sign-manual.[1] The Secretary of State for War has, accordingly, a double authority and responsibility, in respect to the army: first, the limited authority which he exercises under the reservation of his patent; and secondly, the constitutional control which belongs to him as the responsible adviser and officer of the crown in military affairs. In this latter capacity, he wields, in fact, the power and authority of the whole executive government; and where he overrides the opinions of the Commander-in-Chief in matters peculiarly within the jurisdiction of that functionary, he does so, not merely as Secretary of State for War, but as the medium of the decision of the entire Cabinet.[m]

Any reservations in the patent of the Secretary for War must, therefore, be regarded as merely indicative of the pleasure of the crown that the ordinary exercise of the functions of military discipline and command would properly appertain to the Commander-in-Chief, subject to the constitutional supervision of a responsible minister, and must not be considered as absolving the Secretary of State from his constitutional responsibility, or precluding him from exercising the oversight and control which inseparably belongs to the supreme authority of the civil power, in a parliamentary form of government. Upon examining the practical working of the system, we find this distinction entirely borne out. The reservations in the patent are now omitted. So long as they were continued they were, in fact, virtually inoperative. The present Commander-in-Chief has frankly and fully acknowledged the supremacy of the War Minister, and his own subordinate position. For example, he informed the committee that, with regard to the distribution of the forces, at home and abroad, the Secretary for War is cognisant of every movement; that a schedule is sent to him, containing the

[1] Rep. on Mil. Organis. 1860, p. 448.

[m] *Ibid.* p. 453. And see Lord Hardinge's evidence before the Sebastopol Committee, 1854–5, vol. ix. pt. 3. pp. 234–236.

scheme of new distributions, which he approves, or not, as he may think fit, and that the movements take place under his previous sanction. A secretary of state has, indeed, the power of ordering the Commander-in-Chief to move the army, without assigning any reason to him. In a system of parliamentary government, it is absolutely essential that the management of the army and navy, the two most important branches of our administration, should be under the complete control of the executive.[n]

This doctrine of keeping the military administration subordinate to the civil government is not new. It was asserted by Lords Grey and Grenville, during the Regency, in 1812, and was fully recognised by Lord Hill, and by the Duke of Wellington, when they held the office of Commander-in-Chief, before the consolidation of the civil and military departments of the army. Lord Wellington, in 1836, publicly declared that 'the Commander-in-Chief cannot at this moment move a corporal's guard from London to Windsor, without going to the civil department for authority; he must get a route.'[o]

Parliamentary control.

In answer to the supposed danger of such a doctrine, as tending to make the army subordinate to the Parliament instead of to the crown, it was aptly remarked by Earl Grey, that 'the whole notion of there being anything unconstitutional in bringing the army more under the ministry of the day, seems to me to arise from a confusion between the powers exercised by responsible ministers of the crown and powers exercised by parliamentary committees, or some mode of that kind. Undoubtedly it was very unconstitutional in the Long Parliament that all the powers of the state should be assumed by committees of the House of Commons, but that power over the army should be exercised by a responsible servant of the crown appears to me to be an absolutely essential principle of our constitution.' Lord Grey was then asked

[n] Rep. on Mil. Organis. 1860, pp. vii. 446.

[o] *Ibid.* pp. viii. xix. Rep. Com. on Transport service, 1861, p. 48.

whether certain changes he had recommended (which would assimilate the army administration to that now prevailing in respect to the navy) would not bring the army more under the influence of the House of Commons, than in times past. Observe his reply: 'The truth is that the House of Commons has always exercised, and always ought to exercise, a great control over the administration of the army; it cannot be called on to provide for the expense of the army without enquiring in what manner the money so granted is applied.'[p] Moreover, the very existence of a standing army depends on the annual Mutiny Act. The army would be disbanded *de facto* at the end of a year, if the Mutiny Act were not renewed.[q]

To proceed from general principles to matters of detail. And, first, as concerns the discipline of the army. The committee thoroughly investigated into the practice in regard to interference by the civil authorities, with matters affecting army discipline, as well before as since the issue of the supplementary patents. The result appears to be embodied in the evidence of Lord Panmure, who says that while he did not think that any Secretary of State for War would interfere gratuitously with the discipline of the army, as exercised by the Commander-in-Chief; nevertheless, 'if there were anything in the conduct of the Commander-in-Chief which required his interference, the Secretary of State has not only the right, but it is his bounden duty to interfere. It was his business to trust to the Commander-in-Chief the administration of the discipline of the army, and, except under peculiar circumstances, not to interfere with that at all.' Again, 'the Secretary for War, and through him the executive government of the day, is responsible for all the acts of the Commander-in-Chief; but the government and the Secretary of State, putting confidence in the Commander-in-Chief, trust to

Discipline of the army.

[p] Rep. on Mil. Organis. 1860, p. 384.

[q] See *ante*, vol. i. p. 320.

him entirely, and without interference with the discipline of the army.' Several instances of interposition, however, were adduced, but they were all cases involving political considerations, or implying some collision between the military and the civil portion of the community.[r] To the same effect Mr. Sidney Herbert, the then Secretary for War, observed that, in his opinion, 'the ordinary discipline of the army ought to be in the hands of military men and not civilians; but in cases which become public questions the Commander-in-Chief will always be glad to have the assistance of the Secretary of State.'[s]

Military appointments and promotions.

Next, in regard to appointments in the army. Notwithstanding the reservations in the patent, the Commander-in-Chief admitted to the committee that, with respect to chief commands whether at home or abroad,—with respect to the appointment of colonels to regiments, and with respect to promotions, and to the higher staff appointments,—the consent of the Secretary of State for War is invariably obtained before appointments of this description are submitted to her majesty by the Commander-in-Chief.[t]

Ordinary promotions in regiments are made by the Commander-in-Chief without communication with the Secretary of State, who has this check, however, that they are sent to him before being submitted to the queen, so that he can put his finger on any departure from regulations, or on anything else which ought to prevent the appointment or promotion from taking place.[u]

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[r] Rep. Mil. Organisation, 1860, pp. viii. ix. xx. And see pp. 127, 128. Before the reorganisation of the army departments, it was understood that any military officer could be removed from the half-pay list, by the will of the sovereign, upon the advice of the Secretary-at-War (for which he is responsible to Parliament); but such a power is never exercised excepting for an offence affecting the moral character of the delinquent. (Mirror of Parl. 1833, p. 1846. *Ibid.* 1836, p. 125.) This power would now be constitutionally exercised by the Secretary of State for War. See *ante*, vol. i. p. 326.

[s] *Ibid.* pp. ix. xix. And see General Peel's remarks on this subject in Hans. Deb. vol. clxxxix. p. 1015.

[t] Rep. Mil. Organis. 1860, pp. 34, 239.

[u] *Ibid.* p. 446.

In regard to the higher appointments and rewards of the profession, such as 'government, or garrisons, regiments, and ribands,'—they are generally adjusted by personal communication between the Commander-in-Chief and the Secretary of State; on which occasion the Commander-in-Chief informs the Secretary whom he proposes to recommend. Doubtless he must possess immense influence in suggesting the names of officers, and bringing forward their claims to the Minister of War;[v] but nevertheless, should a difference of opinion arise, H.R.H. the Duke of Cambridge declares that the decision must rest with the Secretary of State, 'because, in the constitutional form, the Secretary of State would advise her majesty to take his opinion, and not that of the Commander-in-Chief; and thus the matter must finally come to the decision of the Secretary of State, who is the responsible minister.'[w] In the case of chief commands, naval as well as military, the appointments are frequently made a Cabinet question.[x]

First commissions.

First appointments, however, that is to say, first commissions in the cavalry and infantry, constitute the peculiar patronage of the Commander-in-Chief. First appointments in the artillery and engineers are given to the successful candidates in a competitive examination. But first appointments in the cavalry, and the line, either by purchase or gift, are at the disposal of the Commander-in-Chief, who has the sole power of nomination. The extent of this patronage is very great. Where commissions are sold by the government, the proceeds are carried to a fund, hitherto under the sole control of the Secretary of State for War. This fund is constantly augmented by the

[v] Rep. on Mil. Organis. 1860, pp. 240–243, 277. And Rep. on Board of Admiralty, 1861, p. 624. And see in regard to regimental colonelcies, Hans. Deb. vol. clxiii. p. 428.

[w] Rep. on Mil. Organis. 1860, p. vii. The respective privileges of the Commander-in-Chief and the Prime Minister, in regard to higher appointments, &c., in the army, were not clearly defined until after the accession of William IV. Before that time the practice varied, under successive administrations. Corresp. William IV. with Earl Grey, vol. ii. pp. 277, 280. See *ante*, p. 431.

[x] Rep. on Mil. Organ. 1860, p. 35.

sale of commissions, for the regulated price, by persons who are not entitled to receive their full value; the difference going to the fund. It is used to diminish the charges upon the half-pay list, to lessen the price of cavalry commissions, and for other useful purposes. Commissions are, ordinarily, given away to such persons only as are supposed to have some claim upon the country.[y]

The Secretary of State has no voice in the selection of persons for first commissions, and does not interfere therein in ordinary cases. A list of the names is, however, sent to him from the Horse Guards, before the appointments are submitted to her majesty for approval. This is termed a submission paper, and it is accompanied by a memorandum, asking for the approbation of the Secretary of State. But the Secretary considers his duty in regard to first appointments to be perfunctory; he passes them as a matter of course, unless some distinct objection is raised. Moreover, he is not furnished with the means of ascertaining the merits of the candidates, or the reasons for recommending them. If objections to any particular appointment are brought under his notice, he has the power of withholding his sanction; and although such cases are very rare and exceptional, the existence of the practice is sufficient to show that, even in respect to first commissions, the Secretary of State is virtually supreme, and must be considered as responsible. Nevertheless, there is a decided public advantage in first appointments and promotions being primarily in the gift of an officer who is independent of political pressure.[z]

Relations between War Secretary and Commander-in-Chief.

The conclusion of the matter is this: that notwithstanding any reservations heretofore contained in his patent, the Secretary of State for War has supreme authority and responsibility in all matters affecting the

[y] Rep. on Mil. Organis. 1860, pp. x.–xii. 472. In regard to the Military Reserve Fund, see *ante*, vol. i. p. 454. Commons Papers, 1868, No. 298.

[z] Rep on Mil. Org. 1860, pp. xxi., 158, 161. Rep. on Board of Admiralty, 1861, p. 155. Mirror of Parl. 1835, p. 1031.

administration of the army; that he may either act directly himself, or through the Commander-in-Chief, who is his military adviser, and subordinate to him; and that 'there is no act of the Commander-in-Chief, however small, or however great, that does not constitutionally come within the revision of the Secretary for War,' and for which he is not therefore responsible.[a] It may not always be easy to determine the relative position and rights of these two high functionaries, in every contingency that may occur, but 'practically, both are in such constant and confidential communication together, that neither of them takes any great step without its being known to the other.'[b] Some more precise regulations may hereafter be found advisable to prevent the Secretary of State from unnecessarily invading the province of the Commander-in-Chief; but to quote the words of the Duke of Wellington on this very point, 'there can be but general rules, as landmarks by which the official arrangement of the service ought to be conducted. The best rule is, the mutual good temper and forbearance of the parties.'[c] It was impossible to reconcile strictly the powers exercised by the Secretary for War, in respect even to discipline and the movements of the army, with the reservations in his patent. It was therefore suggested by the committee that the wording of the supplementary patent should be reconsidered, and the limitation be more accurately defined, in conformity with existing usage, so as to avoid the awkward anomaly of a practice at variance with the written authority regulating the same. Pursuant to this recommendation, when Sir

[a] Lord Panmure, in Hans. Deb. vol. cxl. p. 1041. And see *ibid.* vol. clxxxvi. pp. 774, 791, vol. cxciii. p. 1241. 'The duties of the Commander-in-Chief, important as they are, are carried on to a very great extent under the control, and in every respect under the responsibility, of the Secretary of State for War.' Secretary Sir John Pakington, Commons' Papers, 1868, No. 281, p. 28.

[b] Rep. on Mil. Organis. p. 449. Bearing in mind the acknowledged responsibility of the Secretary for War, he ought not to be called upon to state to the House, the times, circumstances, and subjects of his consultations with the Commander-in-Chief upon departmental matters. Hans. Deb. vol. clxxxvi. p. 904.

[c] Rep. on Mil. Org. 1860, p. xxiii.

G. C. Lewis, in 1861, succeeded Lord Herbert in the office of Secretary of State for War, his patent did not contain any reservation whatsoever, as to his responsibility or power. But Sir George Lewis himself drew up a memorandum in accordance with the recommendations of the committee, regulating the responsibility and authority of the Secretary of State for War and of the Commander-in-Chief. This document was signed by the queen, and it remains in force until it shall be revoked, whatever changes may take place in the persons elevated to these respective offices.[d] It is important that some such official regulation should exist, as a means of preventing undue encroachment, by the Secretary of State, upon the authority and patronage which properly appertain to the Commander-in-Chief; and any departure from the ordinary routine, as prescribed by the letters patent, will be gradually settled by usage, in accordance with constitutional principles. In fact, as was truly remarked by Mr. Secretary Herbert, 'whatever you may put into a formal patent, the minister who holds the purse-strings of the army, and who represents it in the House of Commons, will always have the power in his hands.'[e] If irreconcilable differences should occur between the Secretary of State and the Commander-in-Chief on any question, appeal must be made to the Prime Minister, or to the Cabinet; and the Commander-in-Chief must ultimately defer to their decision, or retire from office.'[f]

Division of duties between Horse Guards and War Office.

Upon the practical question of the division of duties between the Horse Guards and the War Department, in ordinary cases, the following rule has been given in an official memorandum. The duties of the Commander-in-Chief embrace the discipline and patronage of the army, entrance into the army, and ordinary promotion therein;

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[d] Secretary for War (Lord Hartington), Hans. Deb. vol. clxxxi. p. 1516. And see *ante*, p. 539.

[e] Rep. Mil. Organis. 1860, p. xix.

Rep. on Board of Admiralty, 1861, pp. 149, 192, 216.

[f] Rep. on Mil. Organis. pp. 451, 497, 668.

in short, the direct superintendence of the *personnel* of the army. With these exceptions everything connected with the management of the army, in peace or in war, its *matériel*, and civil administration, remains in the hands of the Minister for War.[g] To illustrate this by examples. When an army is engaged in active operations in the field, the commanding officer reports direct to the Secretary of State for War, as the official organ of her majesty's government, and receives his instructions. He only corresponds with the Commander-in-Chief upon strictly military details. In proof of this, Lord Hardinge (the then Commander-in-Chief), read to the Sebastopol Committee, a communication to Lord Raglan, upon his appointment to the chief command in the Crimea, in 1854,—which he stated was similar to the letters sent to Sir Arthur Wellesley, in 1809, and to the Duke of Wellington, when he took command of the British army before the battle of Waterloo,—and which was couched in the following terms: 'My Lord, her majesty having been graciously pleased to appoint your lordship to the command of a detachment of her army, to be employed upon a particular service, I have to desire that you will be pleased to take the earliest opportunity to assume the command of this force, and carry into effect such instructions as your lordship may receive from her majesty's ministers.'[h] Furthermore, in all matters relating to the administration and government of the army, as for example, the introduction of a new system of recruiting, arrangements for determining the number of men required, or the like, the Secretary of State for War, after consultation with the Commander-in-Chief, takes the pleasure of the sovereign, to whom, as well as to Parliament, he is responsible for the measures which he may advise.[i] He also prepares for the royal signature, and countersigns,

[g] Rep. on Mil. Organis. p. 597. And see General Peel's remarks on this subject, in Hans. Deb. vol. clxxiv. p. 36.

[h] Rep. Sebastopol Committee, 1854–5, vol. ix. pt. 3, p. 233. See also the evidence of the Duke of Newcastle, *ibid.* p. 147. And Rep. on Mil. Organisation, 1860, p. 576.

[i] Rep. on Mil. Organis. p. 576.

all military commissions, except those that may be prepared by the Colonial Secretary for officers serving in colonial corps, upon a notification of her majesty's pleasure having been taken thereon by the Commander-in-Chief.[j]

Military honours.

The distribution of honours in the army is not under the control of the Commander-in-Chief. All honours flow directly from the crown, and should therefore be bestowed under the express authority and recommendation of a responsible minister. All that the Commander-in-Chief can do is to represent to the Secretary of State for War the names of those officers whom he considers to be worthy of being recommended to the sovereign for such distinctions. Officers are not allowed to receive foreign honours, except by the previous permission of the sovereign; and the queen's pleasure in this instance is taken by the Secretary of State for Foreign Affairs.[k] Regulations in regard to the acceptance of foreign distinctions by British subjects have been issued from time to time by direction of the sovereign. But it is always within the power of her majesty to dispense with the observance of any rule of this kind whenever she may think fit.[l]

Military advisers of War Minister.

The Secretary for War, while he presides over the administration of the army unaided, or rather unencumbered, either with a Board or a Council, has around him experienced professional advisers, in the shape of permanent heads of the various military branches of the department, whose opinions he can consult, either separately or collectively, according to his discretion. This organisation has been adopted advisedly, as presenting all the advantages of a Board, without the objections attending upon that obsolete and irresponsible system.[m] And in the event of a sudden emergency arising, rendering it expedient to take the advice of his colleagues in office, the Secretary has authority to convene a War Committee of the Privy Council, to consist of the principal members

[j] Murray's Handbook, p. 200.
[k] Rep. on Mil. Organis. pp. 40–42.
[l] Lord Stanley, Hans. Deb. vol. clxxxviii. p. 2071.
[m] Rep. on Board of Admiralty, 1861, Evid. pp. 126, 147, 156, 211.

of the Cabinet, and of such other Privy Councillors as it may be desirable to consult.

Re-organisation of War office.

From the time of the Crimean war, until the present day, the organisation of the War Department has been undergoing a gradual change and improvement.[n] Further and more extensive alterations, however, are still in contemplation, with a view to greater efficiency, and to the subjection of the entire department to one central superintendence and control. One of the principal complaints that has been made against the department hitherto, is that on account of its enormous extent, its complicated machinery, and the various independent elements of which it consists, it is too unwieldy for one man to be able to manage it effectually. Again, the large and increasing expenditure for army and ordnance services, on the one hand, and the importance of perfecting our military organisation, regardless of cost, on the other, involve extremely difficult and often conflicting considerations for any man or set of men to determine.

In June, 1864, a departmental committee of the War Office and the Treasury, was appointed to investigate and report upon the constitution of the War Department, and the possibility of a more efficient and economical despatch of business therein.[o] This committee presented four reports, in the years 1864 and 1865, all of which were communicated to the House of Commons.[p] In 1866, there was great activity displayed at the War Office in furthering the work of internal reform. Several official committees were employed in enquiries connected with the various branches of the War Department.[q]

In March, 1867, a departmental committee, presided over by Lord Straithnairn, made an elaborate report upon the Transport and Supply departments of the army, and generally upon the whole question of the reorganisation of the War Office. This committee recommended the

[n] Hans. Deb. vol. clxxxv. p. 605.

[o] Rep. Com. Pub. Accounts, 1864, Evid. 1090, apx. No. 5.

[p] Commons Papers, 1865, vol. xxxi. p. 601.

[q] Mr. Greg's letter, in Civil Service Estimates for 1866-7, Class 2, p. 49.

New Control department.

appointment of a Chief Controller, who should have charge of all departments of supply (*i.e.*, the Barrack service, the Commissariat service, the Purveying service, the Military Store department, and the Transport department, each of which had been previously administered by an independent head), and who should be in direct communication with the Commander-in-Chief, and with the Secretary of State for War. It also recommended the entire reorganisation of the administrative establishments of the army as a matter of imperative necessity.[r] On June 6, 1867, the Secretary for War informed the House of Commons, that this report had been referred to the consideration of the various heads of departments in the War Office, some of whose departments were materially affected by it. When in possession of their views, he would decide whether to remit the whole subject to a parliamentary committee, or to a royal commission, for a thorough investigation into the most suitable organisation for the War department.[s]

On December 19, 1867, the Secretary of State for War advised the Treasury of his intention to appoint Sir Henry Storks to the office of Controller-in-Chief, 'with a position equal, in every respect, to that of a permanent under-secretary of state, on a salary of 2,000*l.* per annum;' requesting Treasury sanction thereto, which was given; though, as will presently appear, the position and salary of this officer were afterwards altered. On December 28, the Secretary again applied to the Treasury for their consent to the appointment of Major-General Balfour as Assistant Controller, with a salary of 1,000*l.* a year, 'as a temporary arrangement to assist in carrying on the measures of amalgamation and reform recommended by Lord Strathnairn's Committee.' This also was agreed to.

But before the new organisation was complete, a ques-

[r] For the Report see Commons Papers, 1867, vol. xv. p. 343.

[s] Hans. Deb. vol. clxxxvii. p. 1699; vol. clxxxviii. p. 586.

tion arose between the War Office and the Treasury, as to the relative standing and powers of the new Controller in the department. It became evident that there was a disposition, on the part of the military authorities, that the military rather than the civil power should be predominant at the War Office, whilst the Treasury were equally determined to maintain the supremacy of the civil government. Difficulties attending its formation.

On March 5, 1868, the Military Secretary at the War Office forwarded to the Treasury, for their consideration and approval, a memorandum of the proposed arrangement of the new Control department and its subdivisions, stating the rates of pay proposed for the officers therein. In reply, the Treasury objected to the scale of salaries, as being excessive, and asked for more information. This request was complied with, and on June 29, the Treasury again wrote to the War Office, reviewing all that had been recommended, since 1860, by Commissions or Committees, for the improvement of military departmental organisation, and expressing a decided opinion that the functions of the Controller-in-Chief, as head of the Supply department of the War Office, ought to be kept entirely distinct from those of the Financial department: that the heads of the Financial and of the Audit departments should be independent of the Controller-in-Chief; and that the Committee of Public Accounts should be consulted upon the regulation of these departments. Furthermore, the Treasury proposed that the War Office establishment. should hereafter comprise the following principal officers, namely — the Secretary of State, a parliamentary under-secretary, a permanent under-secretary, 'who shall be generally, if not always, a military man,' a Controller-in-Chief — *without* the rank of under-secretary, with a salary of 1,500*l.* a year, and who might be either a military man or a civilian—and of a principal financial officer, of equal rank and salary with the Controller, but who should be 'always a civilian.'

On June 30, the Secretary for War notified the Trea-

sury, that he concurred in the aforesaid proposals, though doubtful of their effect upon the position of the Controller. He also transmitted statements of the intended changes in the official arrangements in the War Office, and amended regulations for the new department of Control.

Meanwhile, on April 25, a royal warrant was issued, authorising the establishment of a Department of Control, to be superintended by a Comptroller-in-Chief, acting under the orders of the Secretary of State for War, and subject to such regulations as he may from time to time determine. The House of Commons was duly informed that this appointment had been conferred on Sir Henry Storks, and that of Assistant Controller on General Balfour, in furtherance of the recommendations of Lord Strathnairn's Committee for the consolidation of the departments of Supply and Transport under one head; the which, by placing in the hands of one person a control over the expenditure of the War Office, will, it is believed, conduce to greater economy and efficiency both in peace and war. They were also notified that another valuable administrative reform had been effected in the creation of an Inspector General of the Reserve Forces, who will take charge of the volunteer, yeomanry, and militia forces, the enrolled pensioners, and the army of reserve.[t]

Reserve Forces.

Audit of military accounts.

On June 22, 1868, Sir Henry Storks forwarded to the Secretary for War, a letter with a copy of proposed regulations for the Audit department of the War Office, intended to secure a thoroughly detailed departmental audit, of all military expenditure included in the accounts presented to Parliament.[u] These papers were laid before the House of Commons, and referred to the Committee of Public Accounts. But in view of a speedy extension of the Appropriation Audit to Military and Naval Accounts —the expediency of which the Public Accounts committee recommend should be considered by an official committee

[t] Commons Papers, 1867-8, Nos. 373, 374—I. Hans. Deb. vol. cxci. pp. 50, 57, 280. *Ibid.* vol. cxciii. pp. 1233, 1265. Queen's speech at close of session.

[u] Com. Papers, 1867-8, No. 428.

during the recess—they reported that it was not desirable to adopt any new regulations on this subject at present. They would be willing, however, to enter upon the examination of the proposed regulations at the commencement of the next session, after the enquiry by the official committee shall have been completed.[v]

On July 9, 1868, it was moved in the House of Commons to resolve, 'that the Controller-in-Chief should be an under-secretary of state; and that the audit of the War Office accounts should be entirely independent of the War Office.' But the arrangements of the government being approved, in the main, by leading opposition members, any interference therewith was deprecated by the House; and the motion, after a long debate, was withdrawn.[w]

War Office establishment.

As at present constituted,[x] the department of the Secretary of State for War consists of the principal Secretary of State, a parliamentary Under-Secretary, and a permanent Under-Secretary, with an Assistant, both of whom are military men. There is also a Controller-in-Chief, and an Assistant Controller; likewise a Military Assistant, who is an officer of high rank, and is charged with the conduct of the military correspondence. As the office of Secretary for War is liable to change hands very frequently, and will in all probability be usually held by a civilian, it is the more desirable that several of those who belong to the permanent staff of superior officers, should be experienced military men. It is also expedient that either the political under-secretary or some other departmental officer in the House of Commons, should be professional, and capable of affording assistance to his chief in the discussion of military questions in Parliament.[y]

The War Office establishment includes all the civil

[v] Rep. Com. Pub. Accts. July 21, 1868, p. iii.

[w] Hans. Deb. vol. cxciii. pp. 922–948. The Secretary for War afterwards stated that the Controller was to rank as an under-secretary of state. *Ibid.* p. 967.

[x] Army Estimates, 1868-9, p. 83.

[y] Rep. on Military Organisation, 1860, pp. xviii. xxii. Evid. p. 465. Hans. Deb. vol. clxii. p. 1815. In 1867 and 1868 the political under-secretary was a military man; but he was a peer, and represented the department in the House of Lords.

administrative departments of the army, whilst the military control is exercised through the Commander-in-Chief and his own immediate subordinates. In a return, presented to the House of Commons on August 14, 1867, the following departments are enumerated as being then consolidated under the Secretary of State for War, and the particular duties assigned to each department are described: (1) the Central department, including the general business connected with army administration, appointments, promotions, &c. &c., (2) Ordnance, (3) Contract, (4) Commissariat, (5) Militia, (6) Volunteer corps, (7) Stores, (8) Accounts, (9) Audit, (10) Solicitor's department, (11) Army Medical, (12) Purveyor's, (13) Clothing, (14) Barrack, (15) Works, (16) Surveys and Topographical department.[z] Since the date of this return, as we have seen, the Barrack, Commissariat, Purveying, Stores, and Transport departments have been consolidated under a Controller-in-Chief.

The oversight of general business at the War office is divided between the parliamentary and permanent under-secretaries, according to convenience; except that all matters relating to the militia and volunteers are taken by the parliamentary under-secretary. This officer, being a political functionary, is appointed by the principal secretary for the time being, who has also the entire patronage of his department, and the approval of all appointments in the gift of the several heads of the manufacturing departments at Woolwich, and other out-stations, under the War Office.[a]

The official staff of this branch of the public service is very numerous. It was stated in the House of Commons, in 1868, that 'there were 621 *employés* in the War department, and 156 in the Commander-in-Chief's depart-

[z] Commons Papers, 1867, No. 541. For a comparison between the constitution of the war departments in England and France, see General Balfour's paper in the Journal of the Statistical Society, vol. xxix. p. 427.

[a] Rep. on Mil. Organis. 1860, pp. 59, 138. Parkinson, Under Govt. pp. 165, 169.

ment, making a total of 777 persons employed in the administration of the army.[b]

The Commissariat.

Commissariat.

This branch of the War department has been subjected to many changes, from time to time. In 1816 it was placed under an officer of the Treasury, the commissariat officers being then officially known as 'Sub-treasurers to the Lords Commissioners of the Treasury in the foreign possessions of the crown.' In 1822, it was proposed to attach the Commissariat to the Ordnance Office, but the then Master-General of the Ordnance objected to the union. However, upon the organisation of the War Office under a separate Secretary of State, in 1856, the Commissariat was transferred from the Treasury to the War department, and is now a branch of the new department of Control: all appointments therein being conferred by the Secretary for War.[c]

There is a Commissary General-in-Chief; but the Commissariat Office, in common with all other accounting departments, is still subordinate to the Treasury in matters of finance. It has the custody of large sums of money for army purposes, and distributes the same, under fixed regulations, to regimental paymasters, ordnance storekeepers, and other army accountants, for the supply of provisions, forage, and the means of transport for the queen's troops. Commissariat officers are attached to every military station throughout the empire; and they render directly to the Audit department of the War Office, monthly accounts of their cash and store transactions. In time of war, all the expenditure connected with every department of an army in the field, except the ordinary charges for regimental and barrack services, is conducted by the officers of the commissariat department. Important alterations in the,

[b] Hans. Deb. vol. cxci. p. 84.

[c] Murray's Handbook, p. 132. Report on Transport and Supply Departments of the Army, 1867, Appx. No. xi.

duties and *personnel* of the commissariat have been suggested by the official committee on the Transport and Supply departments, in their report in 1867, which are now under the consideration of her majesty's government.[d]

The Secretary-at-War.

Secretary-at-War.

Before quitting this branch of our subject, it is desirable to advert, briefly, to this office, though it has now ceased to exist. On February 8, 1855, a commission was given to the Secretary of State for War to act also as Secretary-at-War;[e] and from thence until 1863, when the office was formally abolished, the two offices were invariably held by the same person. By various Acts of Parliament, particular duties were imposed upon the 'Secretary-at-War,' and until those statutes should be amended or repealed, no other officer could perform the same. The Secretary-at-War was strictly a financial officer, representing the Treasury, whose duty it was to exercise a control and check over all military expenditure; and no alteration, even in matters of promotion or discipline, necessitating any increased expense, could be carried into effect by the Commander-in-Chief without his sanction. The office originated in a delegation from the Treasury of the financial business of the army, which is too minute and complicated to be directly controlled by the Treasury. The Secretary-at-War was charged with the preparation of the annual Mutiny Bill, and the conduct of the Estimates in the House of Commons, and had other duties of a minor character to perform, the which will be found enumerated in a memorandum given in evidence by Mr. Fox Maule, before the committee on army and ordnance expenditure in 1850. The office was rarely held by a Cabinet minister; but when this has occurred (as in the case of Mr. Sidney Herbert, in 1854) it made no difference

[d] See Index to Report, p. 537.
[e] Rep. Com. Mil. Organis. 1860, Evid. 533, 534.

in his official position. Since the consolidation of the office with that of Secretary of State for War, the oversight and control over army expenditure has reverted to the Treasury, who are still responsible for the same. Lord Aberdeen, who was Premier at the time the change was effected, was in favour of continuing the office of Secretary-at-War, as distinct from that of Secretary for War, as a means of controlling the expenditure of the army; but his views did not prevail, and soon after his administration gave way to that of Lord Palmerston, under which the present organisation of the War department was matured.[f] In 1863, by the Act 26 Vict. c. 12, the office was formally abolished, and its duties and privileges transferred to the Secretary of State for War.

The Commander-in-Chief.

Commander-in-Chief.

This high functionary is the queen's executive officer in the exercise of the royal prerogative of military authority. He is also (through the intervention of a secretary of state) her majesty's organ of communication with the army, to carry out and maintain the prerogative so far as regards the military command and discipline of the army, and the appointment or promotion of subordinate officers therein. This royal prerogative is, nevertheless, subject to the control of responsible ministers of the crown, and the Commander-in-Chief himself is necessarily subordinate to the supreme authority of the civil power. In the preceding section we have carefully considered this question, and endeavoured to point out the relative jurisdiction of the Commander-in-Chief, and of the Secretary of State for War, who is the civil and responsible head in all military affairs. We have now to indicate the authority and duties of the Commander-in-Chief, as head of the army; bearing in mind that all his acts are subject to the constitutional oversight and control of the Secretary of State for War.

[f] Rep. Com. Mil. Organis. 1860, Committee, 1854–55, vol. ix. pt. 3, Evid. 11–40. Report of Sebastopol pp. 165–67, 302.

His position and duties.

The Commander-in-Chief (or, as he has been styled since the death of the Duke of Wellington, the General Commanding-in-Chief) of the British army is the supreme executive military authority; having, with the exception of the militia, yeomanry, and volunteers (which are under the immediate direction of the Secretary for War), the entire practical control and personal superintendence of the military force of the country, and of all matters relating to its interior economy and discipline, so far as is consistent with the acknowledged supremacy and responsibility of the Minister for War; and his proposals and recommendations are very rarely disregarded or interfered with by that functionary.[g] The finances of the army, however, are altogether in the hands of the civil power, and as every movement of troops is attended with expense, the constitution gives no authority to the Commander-in-Chief to move or direct the distribution of troops, until the signature of a secretary of state to the proposed route warrants the same, and provides for the cost thereof. The necessity for obtaining this preliminary sanction forms a check upon any combination of troops not authorised by the executive government.

The Commander-in-Chief receives through one of the secretaries of state the royal instructions with respect to the distribution and employment of the troops, whether at home or abroad.[h] He also provides for carrying into execution the military operations of a campaign planned by the Secretary of State for War. The Quartermaster-General and the Adjutant-General are his subordinate

[g] Rep. on Military Organisation, 1860, p. 42. And Mr. Godley's evidence, *ibid.* pp. 128, 129. On June 1, 1858, a private member of the House of Commons carried against ministers a resolution 'that the departments of the Horse Guards and War Office should be placed under the control of one responsible minister.' No further action was taken upon this resolution, as the government declined to do anything, and the mover was unable to follow it up by any scheme of army reform. (See Hans. Deb. vol. cl. p. 1447.) But the resolution virtually embodies the actual practice.

[h] *Ante*, p. 542. But it has been officially stated that 'the sending out and recalling of [particular] regiments on foreign service were matters entirely within the control of the Commander-in-Chief.' Hans. Deb. vol. clxxii. p. 435.

officers, and are appointed by the queen upon his recommendation. Through the former he directs the disposition and movements of the army, and the plans and surveys necessary to a campaign; through the latter he makes known all general orders and instructions. His patronage and influence extend over the whole military force of the country, except the militia and volunteers.[a] First commissions in the cavalry and infantry are principally in his gift; and, as regards regimental appointments and promotions, the Secretary for War almost invariably concurs, as a matter of course, in his recommendations.[b] His recommendations in respect to the higher appointments, which are strictly within the gift of the war minister, are also very influential.[c]

Has access to the sovereign.

The Commander-in-Chief has the privilege of personal communication with the sovereign, to receive the royal commands in matters of military administration. The army take pride in seeing their chief brought into immediate communication with her majesty; and, at the same time, no constitutional objection exists to the practice; for, as will be seen in considering the three instances in which this privilege is ordinarily exercised, it is purely formal and ministerial, and does not derogate from the supreme control of responsible advisers of the crown.[d]

[a] Murray's Handbook, p. 246. Thom's British Directory, 1862, p. 391.

[b] See the debate in the House of Commons on May 26, 1865, on the case of Lieut.-Col. Dawkins, whom the Commander-in-Chief, acting on the report of a departmental committee of enquiry, had directed to be placed on the retired list; regarding him as unfit to be placed in command of a regiment, although there was no imputation upon his character as an officer and a soldier: and especially observations of Lord Palmerston on this case, vindicating the right of the crown to dismiss officers from the army, without assigning any reason, if it should think fit to do so. This power is of course exercised upon the advice of a responsible minister; but the government have refused to give 'the names of all those officers who had been removed or placed on half-pay, without a fair trial,' as such a return would be 'extremely invidious,' and, moreover, would not include all who had been thus dealt with by the military authorities, as in some instances officers, rather than be dismissed, had made formal application to be placed on half-pay. Hans. Deb. vol. clxxx. pp. 456, 457; and *ante*, vol. i. p. 327.

[c] See *ante*, p. 544.

[d] Rep. of Sebastopol Committee, 1854-5, vol. ix. pt. 3, p. 235. Lord Hardinge's evidence.

On amount of force required.

The first occasion in which the Commander-in-Chief is permitted the privilege of taking the royal pleasure at a personal interview is, in regard to the amount of force required for the year. The decision on this point is taken by the Cabinet in Council. It is then communicated, in an official letter, to the Commander-in-Chief, by the Secretary of State. The Commander-in-Chief then formally, and as a ministerial agent, takes the pleasure of the sovereign thereupon. But it is the advice of the queen's ministers, for which they are exclusively responsible.

On army clothing.

The second occasion of this description is in regard to the patterns of army clothing. These are, in the first place, selected by the Commander-in-Chief, and submitted by him to the queen. They are then sent by the Commander-in-Chief to the office of the Secretary of State, as having passed under the cognisance of the sovereign. The Secretary, if he sees no reason to advise the queen upon the subject, either as concerns the pattern or the expense it involves, then obtains the royal authority to seal the pattern for the adoption of the army. But where any change is contemplated which involves additional outlay, the previous consent of the Secretary for War is indispensable; and practically no great change in uniforms can be made without his concurrence.

On military appointments and promotions.

The third instance is with regard to appointments and promotions in the army. It has always been customary that the appointment of officers in the army, of whatever rank and to whatever military position, should be submitted to the queen, for her approval, by the Commander-in-Chief. Lists of these nominations are, in the case of first appointments, submitted to the Secretary of State for War before they are presented by the Commander-in-Chief to the queen for her sanction. And all other appointments are submitted to the queen after consultation with the Secretary. So that, as we have already seen, the Secretary of State has the power of exercising a veto on every promotion and appointment in the army, excepting

first commissions, and even with respect to these, the existence of an indirect control has been clearly demonstrated.

If her majesty approves of the submission list, she places her sign-manual at the top of it. At the bottom of the list there are written directions to the Secretary of State to issue commissions to the persons named therein, and this also is signed by the queen.[e] By a recent statute it is declared, that the affixing of the royal sign-manual to the commissions of officers of the Army or of the Royal Marines shall be unnecessary, provided that such commissions are duly authenticated as having been issued by royal command, by the signatures of the Commander-in-Chief and of a Secretary of State, &c.[f] This Act conforms the practice in regard to military commissions to that of naval commissions, which are signed by the Lords of the Admiralty only, and not by the sovereign.[g]

The foregoing are the only occasions in which official personal communications take place between the officer commanding the royal army and the sovereign; and in every one of them the virtual control and supremacy of the Secretary of State for War is apparent.[h]

Responsibility for his appointment.

Until the beginning of the present century the sovereign claimed the right of nominating the Commander-in-Chief.[i] Then, as now, a Prince of the Blood was occasionally appointed to this office. And it is only since 1806 that the responsibility of ministers for the control and management of the army has been fully acknowledged.[k] In 1850, two years before his death, the Duke of Wellington, then Commander-in-Chief, urged his royal high-

[e] Hans. Deb. vol clxv. p. 1487.

[f] 25 Vict. c. 4. And see *ante*, vol. i. p. 238.

[g] Hans. Deb. vol. clxv. p. 1486.

[h] Rep. on Military Organisation, 1860, pp. xxi. 34, 39, 86.

[i] Upon the resignation of the Duke of York, on March 17, 1809, George III., without waiting for any communication from his ministers on the subject, wrote to the Premier (the Duke of Portland) nominating Sir David Dundas to be commander-in-chief. He was appointed accordingly, and retained the office until 1811, when it was again conferred upon the Duke of York. Jesse, Life of Geo. III. vol. iii. p. 532.

[k] See *ante*, vol. i. pp. 56, 324.

Offered to Prince Albert.

ness the Prince Consort to consent to succeed him in the office. The professed object of the Duke, in desiring to see Prince Albert invested with this honourable office, was to maintain 'the principle of the army being commanded by the sovereign.' He had himself 'endeavoured to make the practice agree with that theory, by scrupulously taking, on every point, the queen's pleasure before he acted. But, were he gone, he saw no security, unless the prince undertook the command himself, and thus supplied what was deficient in the constitutional working of the theory, arising from the circumstance of the present sovereign being a lady.' Prince Albert admitted the force of this argument, and acknowledged it to be his duty to support the queen's authority in this as in all other matters, but he was strongly impressed with the conviction that the proffered appointment would be incompatible with the adequate discharge of the duties devolving upon him as consort of the queen. He therefore declined to become a candidate for the office, and, after the death of the Duke of Wellington, it was conferred upon Lord Hardinge.[1]

Its relation to the ministry.

While it is imperative upon the Commander-in-Chief that he should administer the affairs of the army in subordination to the will of the ministry for the time being, as expressed by the Secretary of State for War, it is not essential that his political opinions should be identical with those of the party in power. Lord Hill, for example, retained the post of Commander-in-Chief through all the changes of ministry that occurred between 1828 and 1842; though his opposition to the Reform Bill, in 1832, gave great offence, not only to the Prime Minister (Earl Grey) but also to the king.[m] The Duke of Wellington, who, upon the retirement of Lord Hill, in August 1842, by reason of his growing infirmity, succeeded him in office (having previously occupied the post for a short

[1] Prince Albert's Speeches, &c. pp. 71–78. And see *ante*, vol. i. p. 198.

[m] Corresp. William IV. with Earl Grey, vol. ii. pp. 272–280.

time, in conjunction with a seat in the cabinet, in 1827-8),[n] and continued in command of the army until his death, in 1852. During this interval there were several successive ministries, of different political creeds, and in one of them, that of Sir Robert Peel, the Duke was permitted to hold his office in connection with a seat in the Cabinet, from 1842 until the downfall of the ministry in 1846. The circumstances attending this appointment were as follows:—His Grace was already in the Cabinet, though without office, when he was made Commander-in-Chief. But in the year 1837 it seems that he had publicly stated that, in his opinion, the Commander-in-Chief ought not to be a cabinet minister, lest he should 'be supposed to have any political influence or bias upon his mind, particularly upon the subject of promotions in the army.' Whereupon, soon after Parliament met in 1842, Lord John Russell called the attention of the House of Commons to the subject, and pointed out that there had been no instance of a member of the Cabinet being entrusted with this executive office since the time of General Conway, in 1782, with the exception of the Duke of Wellington's own case, above mentioned, in 1827. In reply, Sir Robert Peel 'apprehended that there was no constitutional rule against the tenure of a seat in the Cabinet by the Commander-in-Chief,' and considered that it was justified by the analogous cases of the Master-General of the Ordnance and the First Lord of the Admiralty. He added that the Duke of Wellington had retained his seat in the Cabinet upon accepting the command of the army, at the unanimous request of the whole Cabinet, and he himself, as Premier, assumed 'the whole responsibility of the act.'[o] The matter was then dropped.

Not proper a Cabinet office.

When Lord Hardinge was made Commander-in-Chief, in 1852, he was assured by the Premier (Earl Derby) that

[n] See *ante*, vol. i. p. 114. And Hans. Deb. N. S. vol. xvii. p. 462.

[o] Hans. Deb. vol. lxvi. pp. 1347-1351. And see *ibid.* vol. lxx. p. 611.

he 'was under no obligation of a party or political nature;' and though he continued in office under a Whig ministry, he was never interfered with in the distribution of patronage, or in the management of business at the Horse Guards.[p] His lordship was succeeded in the command of the army, in July 1856, by his royal highness the Duke of Cambridge, the present Commander-in-Chief. No seat in the Cabinet has at any time been offered to his royal highness, partly because, in the words of Sir Robert Peel, in reference to the case of the Duke of York, 'it was not probable that a prince of the blood, holding the relation that he did to the throne, should have a seat in the Cabinet;'[q] but chiefly in consequence of the more decided opinions entertained as to the inexpediency of such an arrangement, since the re-organisation of the War Department, under the immediate control of a responsible minister of the crown.

Has no political functions.

Being the executive head of the army, and the direct representative of his sovereign's authority, it is considered inexpedient that the Commander-in-Chief should exercise any political functions which might lead to encroachment upon the royal prerogative. For a similar reason, it has also been deemed wrong in principle that his subordinate officers, the quartermaster-general and adjutant-general, or his military secretary, should accept seats in the House of Commons, and enter into the public discussion of military matters. This complete disconnection from the political administration of affairs gives a greater stability to the office of Commander-in-Chief, and enables him to exercise a more independent control over the army. It also serves to discourage officers from the hope of professional advancement through political interest.[r] The Commander-in-Chief is, however, a member of the Privy Council, and must be considered as a responsible, although non-political, officer of the existing government. Though

[p] Hans. Deb. vol. cxxx. p. 100.
[q] *Ibid.* vol. lxvi. p. 1349.
[r] See Grey, Parl. Govt. new edit. p. 285.

not removed upon every change of administration, he nevertheless holds office during pleasure, and is removable by the queen upon the advice of the Prime Minister; but it would only be upon a very grave and sufficient occasion that his removal would take place.[8]

His position in Parliament.

From the dignified and important position which he occupies, the Commander-in-Chief is generally a peer of the realm, and is accordingly at liberty to afford information respecting the army in the House of Lords. The War Department, however, is officially represented in Parliament by the Principal Secretary of State for War and by the political Under-Secretary, one or other of whom should have a seat in either House, as it might be convenient. If the Principal Secretary be a member of the House of Commons, then the Under-Secretary should be in the House of Lords.

Defence Committee.

The Permanent Defence Committee, which was first established during the Crimean war, is a valuable auxiliary to the War Department. It is composed of certain artillery and engineer officers, being heads of the principal military departments, and of a naval Lord of the Admiralty, and is presided over by the Commander-in-Chief. The Committee acts purely as a council of advice; it can originate nothing, but confines its deliberations to subjects connected with the fortifications and armaments of the country, which may be referred to its consideration. Its reports are addressed to the Secretary of State for War. There is also a Fortification Committee, composed (with one exception) of different members to the other, but likewise of distinguished officers of engineers and artillery, with two admirals and a civilian, whose duty it is to consider the plans of the fortifications, now in progress of construction, for the defence of the dockyards and naval arsenals, &c., of the

Fortification Committee.

[8] Rep. on Mil. Org. 1860, p. 42. Rep. on Official Salaries, 1850. Evid. 1517. Murray's Handbook, p. 247. See also debates in the House of Commons, on June 1 and 28, 1858.

United Kingdom, previously to their being submitted to the Defence Committee.[t]

Council of Military Education.

There is also a Council of Military Education, which is presided over by the Commander-in-Chief, and consists of a vice-president and four ordinary members,[u] who usually retain their seats at the council for five years, according to the practice in regard to all staff appointments, but may be continued for a longer period, at the discretion of the Commander-in-Chief. This council arose out of a Royal Commission, appointed in 1856, to consider the subject of the military education of officers of the British Army, with a view to the improvement of the same, especially in the case of staff officers. The commission reported in 1857, and shortly afterwards the Council of Education was appointed.[v] Its duty is generally to supervise the education of the army, to control the preliminary examinations to which all officers are subjected before obtaining their first commissions, to conduct and control the competitive examinations in the higher branches of the service, including the engineers and artillery, and to conduct examinations for appointments on the staff of officers below a certain rank. The council is very strict in refusing to pass any for commissions who are unable to pass the preliminary examination, and the Horse Guards rarely interfere with their decision.[w] The Secretary to the Council is a military officer.

The Horse Guards establishment.

The Commander-in-Chief has a military secretary, appointed by himself, who occasionally holds levees, at which officers and others having business to transact attend and make known their claims and wishes. There are also two assistant-secretaries, a private secretary, and a numerous staff of clerks, all of whom are appointed by the Commander-in-Chief.[x] The other principal officers subordi-

[t] Rep. on Mil. Organisation, pp. 298, 577. Rep. of Progress on Fortifications. Commons Papers, 1867, vol. xlv. p. 491.

[u] Army Estimates, 1868-9, p. 64.*

[v] See Commons Papers, 1857, vol. vi. p. i. *Ibid.* 1860, vol. xxiv. p. 1.

[w] Hans. Deb. vol. clxxxii. pp. 473–478.

[x] Murray's Handbook, p. 248. Army Estimates, 1868-9, pp. 85, 86.

nate to the Commander-in-Chief are the adjutant-general, the quarter-master-general, and the judge-advocate-general. Pursuant to a recommendation of the Recruiting Commission of 1866, the recruiting service has been made a separate department, presided over by an officer who is responsible to the adjutant-general, and through him to the Commander-in-Chief.[y]

The Judge-Advocate-General.

The judicial department of the army is presided over by the Judge-Advocate-General of the United Kingdom, who is appointed by the queen under the sign-manual, and holds office during pleasure. He is the sole representative of the government in all military proceedings before general courts-martial, maintaining the interests of the crown, and prosecuting either in person or by deputy, in the sovereign's name, and all matters arising out of the administration of martial law come under his supervision.

His official duties.

It is his duty freely to advise the military court, as the ordinary judges direct the jury, upon such questions as may arise, either on points of law or in the form of procedure, whether the question be one of military or common law. His statutory powers are defined in the annual Mutiny Act. He appoints the time and place for holding the court, and summonses the witnesses. On the trial he is bound so far to assist the accused as to see that the case is brought fully and fairly before the court. He has no absolute judicial authority, nor any voice in the sentence of the court; but, after the trial, the proceedings had are transmitted to the Horse Guards, and from thence to the Judge-Advocate-General. It then becomes the duty of this officer to examine into the sentence, and to lay the report of the proceedings before the queen, tendering his advice whether they have been legally conducted, and whether the sentence should be confirmed or rejected.

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[y] Com. Papers, 1867, vol. xv. p. 8. Hans. Deb. vol. clxxxv. pp. 1770, 1780.

He then returns the proceedings to the Commander-in-Chief, with a memorandum of the advice offered to her majesty, and of the queen's commands thereupon.[z] His advice, however, is strictly confined to the legality of the proceedings and sentence; it must not interfere with the royal prerogative of mercy, which is exercised or withheld upon the responsibility of the Secretary of State.

Parliamentary duties.

The Judge-Advocate-General, though a quasi-judicial officer, has usually a seat in the House of Commons, where he acts as the legal adviser of the government on military questions. He is necessarily a political adherent of the party in power, and retires from office on a change of administration. He is also sworn of the Privy Council; and is the only officer of the government, out of the Cabinet, who has the right of personal access to the sovereign, with the exception of the Commander-in-Chief. He appoints, by general warrant, a Deputy-Judge-Advocate, who is the permanent and working officer of the department.

Clerks.

He has also the nomination of the various clerks employed in the department; but the office is under the general control of the Commander-in-Chief, except in pecuniary matters, which come under the direction of the Secretary of State for War.[a]

Secretary of State for India.

Secretary for India.

From the year 1784 to 1858, the territories of the British Crown in the East Indies were governed by a department of State designated the Board of Control for the Affairs of India, which was established under the authority of the Act 24 George III. c. 25, in conjunction with the Court of Directors of the East India Company, who were

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[z] See Hans. Deb. vol. clxxviii. p. 365.

[a] Rep. on Mil. Organisation, 1860, pp. xxi., xxii. Rep. Off. Sal. 1850, Evid. 204. Murray's Handbook, p. 259. Parkinson's Under Govt. pp. 109, 112. Stapleton's Canning and His Times, p. 612. Hans. Deb. vol. clxxiii. p. 1161. *Ibid.* vol. clxxxi. p. 1763.

incorporated by a royal charter, which had been amended by various Acts of Parliament.[b]

But, in 1858, this double government was abolished, and the entire administration of the British Empire in India was assumed by her majesty. Henceforth India was no longer to be regarded as in any sense a colony, but as part of the territory of the British sovereign, and subject to the direct authority of the crown, exercised through the instrumentality of a Secretary of State. Under the Act 21 & 22 Vict. c. 106, all the powers hitherto vested in the East India Company and in the Board of Control for the Government of India were transferred to a fifth principal Secretary of State.

Indian Council.

By the Act aforesaid, a Council of State for India was established, consisting of fifteen members, each being allowed a salary of 1,200*l.* per annum, who should hold office during good behaviour, and be removable only upon an address of both Houses of Parliament. This Council is intended to advise and assist the Secretary of State in the transaction of Indian business, and to be to some extent a check upon the exercise of his administrative powers, otherwise arbitrary, there being no representative system in India to control his acts.

Of the fifteen members composing the Indian Council, seven were chosen by the Court of Directors of the East India Company from their own body, and the other eight members nominated by the crown, upon the advice of the Secretary of State. Vacancies amongst the elected members are filled up by the choice of duly qualified persons by the elected members; and vacancies amongst the nominated members by the crown.[c]

The Council is appointed to meet at least once in every week, when they are to be presided over by the Secretary of State, or, in his absence, by a vice-president appointed

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[b] For particulars concerning the functions of the Board of Control, see Report on Official Salaries, 1850, pp. 194–200. Murray's Handbook, p. 221.

[c] 21 & 22 Vict. c. 106, secs. 8, 9.

by him. Questions are determined in council by a majority of voices, the presiding officer in cases of equality having a casting vote, in addition to his ordinary vote as a member of the Council. The Secretary of State, however, is at liberty to overrule the decisions of his Council, save on two classes of questions, namely, in making appointments to the Supreme Council of India, or to the Council of the several Presidencies, and in appropriating any part of the Indian revenues.[d] In such cases, although the Council cannot act without his consent, the Secretary must be sustained by a majority of his Council. Upon all other questions, the Secretary may overrule his Council, but must afford them an opportunity of recording their reasons for dissenting from his acts, and himself record his reasons for disregarding their advice. The Secretary of State is also empowered to send orders without the concurrence of his Council; but if they disapprove the same they may record the reasons for their dissent; and if a majority disapprove he must, in like manner, place his reasons upon record. Moreover, the Secretary is at liberty to introduce into the Imperial Parliament Bills upon Indian affairs without being obliged to consult his Council thereon;[e] and he may despatch letters to India through the Secret Department without making known their contents to the Council: but this power is very rarely resorted to; as a matter of ordinary routine, almost everything goes before the Council.[f]

Objection was taken at first to the working of the Indian Council, on the ground that it hampered the free and independent action of the Secretary of State in the important questions wherein the consent of the Council was made essential to the carrying out of his policy.[g] But after a longer experience in this novel method of administration,

[d] 21 & 22 Vict. c. 106, secs. 23, 29, 41.

[e] Hans. Deb. vol. clxiii. p. 1662. *Ibid.* vol. clxxxvii. p. 1062. Report on Board of Admiralty, 1861, pp. 339–344.

[f] Hans. Deb. vol. cxcii. pp. 1880, 1881.

[g] See Rep. Board of Admiralty, 1861, pp. 162, 340.

more favourable opinions began to be entertained in regard to the same by those most competent to judge;[k] and especially by statesmen who had served as Secretaries of State for India, who have repeatedly borne testimony to the very valuable support and assistance afforded to them by their Council.[l]

Committees of Council.

The Council is divided by the Secretary of State into six Committees of five members each, every member being on two Committees—to wit, the Revenue, the Judicial, the Public Works, the Political, and the Military Committees, and a Committee on other miscellaneous matters. Each Committee is charged with its own particular branch of administration, and is required to advise upon drafts of despatches, to frame answers thereto for the consideration of the Secretary, and generally to discuss all matters referred to them by the whole Council, or by the Secretary of State.[m] In addition to the ordinary, and sometimes merely formal, reference of despatches and other documents to the Committees, it was usual for Sir Charles Wood, when Secretary for India, to consult his councillors individually, inviting a free expression of their opinions; and in difficult cases he would himself attend the Committees, and share in their deliberations. He was thus enabled to avail himself to the uttermost of the experienced advice of his permanent Council. And such was the unanimity that prevailed between himself and his councillors, that, during his whole tenure of office (from 1859 to 1866), he only overruled their decisions four times, and then upon matters of minor importance.[n]

Council over-ruled by Secretary of State.

But almost immediately upon the appointment of Sir Stafford Northcote, in March 1867, to be Secretary of State for India, he found it advisable to overrule his

[k] Hans. Deb. vol. clxix. pp. 1797–1803; vol. clxxii. pp. 778–791; vol. cxci. p. 1202. And see Rep. Commons Com. on Education, 1865, Evid. 2299.

[l] West, Administration of Sir C. Wood, p. 17. Hans. Deb. vol. cxc. p. 366; vol. cxci. p. 1203.

[m] West, p. 12. Hans. Deb. vol. clxxxvii. p. 1047; vol. cxcii. p. 1881.

[n] West, pp. 12, 17, 18.

Council in a very important case. The decision which he transmitted in a despatch to the Governor-General of India respecting the claims of the Maharajah of Mysore was arrived at contrary to the opinions of a majority of his councillors. The attention of the House of Commons having been called to this despatch on May 24, the Secretary explained and justified his conduct to the satisfaction of the House.[o]

Responsibility of the Secretary.

The system created by the Act 21 & 22 Vict. provides that the government of India shall be administered by a Governor-General, who is subject to the control of the Secretary of State in England. But the Secretary for India is himself made personally responsible for everything connected with Indian government, at home and abroad.[p] He is likewise responsible for the security of the Indian revenues, no part whereof can be appropriated without his consent and authority. His responsibility is complete and undivided, save only that if he propose a grant of money, and the Council think fit to refuse it, the responsibility for such a proceeding must rest upon the Council.[q]

Supreme control of Parliament.

The constitutional relations between the Secretary for India and his Council, and between the governing powers of India and the Imperial Parliament, gave rise, in 1867 and 1868, to some interesting debates in the House of Commons, wherein questions were mooted that still remain to be settled.

The control of Indian affairs has been entrusted by the Act of 1858 to a responsible minister of the crown, who must be prepared to defend in Parliament his conduct and policy, and also to determine upon his own responsibility all questions affecting the welfare and good government of that country which have not been specially reserved by Parliament for the decision of other authorities. Certain

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[o] Hans. Deb. vol. clxxxvii. pp. 1027–1075.

[p] *Ibid.* vol. clxxii. p. 784; vol. cxci. p. 1202.

[q] Lord Stanley, *ibid.* vol. cxxii. p. 789. And see Commons Papers, 1860, vol. xviii. p. 100.

questions, however, have been distinctly reserved by Act of Parliament to be determined by a majority of the Indian Council, viz. appointments to the Supreme or Presidential Councils, and grants of money out of the revenues of India. If, therefore, a Secretary of State be overruled by his Council upon either of these questions, he cannot be held personally accountable for the same.

Restrictive authority of Indian Council.

It has, indeed, been argued, that 'almost every question connected with government raises in some way or other the question of expenditure. The construction which high legal authorities put upon the Act is that, directly or constructively, every despatch or order raises a question of expenditure, over which the Council of India have a conclusive and absolute veto, and from which there is no appeal, except by an Act of Parliament.'[h] But this is a manifest misapprehension of the intentions of Parliament, in regulating the respective powers of the Secretary for India and his Council, and is a doctrine utterly subversive of the true responsibility of the Secretary of State. The powers of the Secretary can only be limited by the precise terms of the statute, and in the particular cases therein set forth.

So far as regards the restrictive authority of the Indian Council, the intention of Parliament in the creation of that body was evidently that it should serve as a check and restraint upon the Secretary of State in certain acts required to be done in council, and not that it should be invested with the general functions of control which constitutionally appertain to the House of Commons.

Its relation to the House of Commons.

An eminent ex-Secretary for India has remarked on this point: 'The House of Commons is so overwhelmed with business nearer home, that it has no opportunity of making itself acquainted with all those vast fields of knowledge that will enable it to exercise an efficient vigilance over the acts of the Secretary of State for India. Therefore it has instituted this Council to be its deputy,

[h] Hans. Deb. vol. clxxxvii. p. 1071.

as it were, to watch him, and see that the powers placed in his hands are not abused. It ought, however, to be clearly understood, that the moment the House steps in and expresses an opinion on a subject connected with India, that moment the jurisdiction of the Council of India ought to cease. It is not to be endured in this constitutional country for a moment, that the Council should set itself against the express opinion of the House,' otherwise, 'their large powers will speedily be restricted.'[1]

Whilst, in a legal point of view, the Secretary of State has not the same power of overruling his Council in matters involving the expenditure of money that he possesses in other cases, there undoubtedly remains a general controlling power in the hands of Parliament; and if the House of Commons should think fit to hold the Secretary for India responsible in a case of this description, it would materially strengthen his position. The Secretary always has the power to bring such questions before Parliament, with a view to raise a full and fair discussion thereon; and if it could be shown that the Council were objecting to that which was absolutely necessary, he could thus put a strong moral pressure upon them, which would doubtless enable him to carry his point.[j]

On the other hand, 'it would be a dangerous principle to establish, that the House of Commons, whenever a case of what it deemed to be individual hardship was brought before it, should, with comparatively little knowledge of the matter, interfere and try to overrule the decision of the Council of India' upon a question within the limits of its prescribed powers. While the House of Commons is not precluded, under such circumstances, from appointing a Committee of Inquiry into a particular complaint arising out of a decision of the Indian Council upon a financial matter, 'no Resolution which might be passed by a Com-

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[1] Viscount Cranborne, Hans. Deb. vol. cxci. pp. 1205, 1279; vol. cxcii. vol. clxxxvii. 1071, 1072. p. 1883.

[j] Secretary Northcote, Hans. Deb.

mittee, or even by the House itself, would be legally binding on the Council of India, because Parliament has decided, on general grounds, to remove from itself the duty of administering the finances of India, and has referred that duty to another body.'[r]

The manner in which the House of Commons exercises its general controlling power over the proceedings of the Indian Government in ordinary cases, may be seen by referring to the debates in the House on August 2, 1867, concerning the famine in Orissa, and the despatch of the Secretary for India respecting the conduct of the local authorities upon that emergency;[s] and, on April 20 and 24, 1868, on the policy and conduct of government in advancing loans of public money to the Madras Irrigation Company.[t]

Case of the Maharajah of Mysore.

Reference has already been made to the debate in the House of Commons on May 24, 1867, upon the claims of the Maharajah of Mysore, as being the first occasion of a disagreement between the Secretary for India and his council upon an important public question.[u] It was alleged in that debate, that certain dissents recorded by members of the Indian Council against the action of the Secretary of State in this question, evinced 'a tendency to encroach beyond the sphere which Parliament has assigned to them, and to entrench upon the prerogatives of the House of Commons.'[v] But in justice to the members of the Indian Council it should be stated, that their published dissents do not appear to justify this complaint.[w] The councillors objected to the then Secretary for India (Lord Cranborne) having sent a despatch to India, upon a question of such magnitude as the re-establishment of a native state in Mysore, by the free gift of the crown, without the subject having been 'once mooted in council,' thereby overlooking 'the law and the constitutional checks interposed by Parliament.' The Council merely claimed 'to be heard' on such a question; and Lord Cranborne was so fully impressed with the reasonableness of this claim, that he afterwards 'frankly avowed his inadvertence in the matter.' Sir S. Northcote succeeded Lord Cranborne at this juncture, and before action could be taken upon the aforesaid despatch, the new

[r] Case of Sir T. J. Metcalfe, Hans. Deb. vol. cxci. pp. 1275, 1279.

[s] *Ibid.* vol. clxxxix. pp. 770-818.

[t] *Ibid.* vol. cxci. pp. 946-971, 1298.

[u] See *ante*, p. 574.

[v] Hans. Deb. vol. clxxxvii. p. 1071.

[w] Papers relating to the Claims of the Maharajah of Mysore, Commons Papers, 1867, vol. l. p. 569.

Secretary laid before the Council a draft despatch on the same subject, but 'intimated to the Council that he felt himself bound, as a member of Lord Derby's government, to carry out the main policy indicated by Lord Cranborne, whatever the views of the Council might be;' thus practically settling the question on his own authority.[x] But having afforded to the Council an opportunity of recording their opinions upon the policy enunciated in this despatch before it was sent out, and having afterwards obtained the tacit approval of the House of Commons to his proceedings, the conduct of the Secretary for India upon this occasion was amply justified.

Indian revenues.

The whole of the Indian revenues are at the disposal of the Secretary of State and his Council, and they are at liberty to draw upon these revenues for all expenditure required for the service of India, whether at home or abroad. But the debt of India cannot be increased without the sanction of the House of Commons. And all expenditure incurred must be made known to that House.[y]

Indian Budget.

Since the appointment of a Secretary of State for India, who is responsible to Parliament for the government of that country, it has been customary for an annual statement to be made to the House of Commons, by the Secretary for India, upon the revenue and expenditure, and upon the moral and material progress and condition of the country during the past year. The 53rd section of the Act 21 & 22 Vict. c. 106 requires a statement of this description to be presented to both Houses of Parliament; but for some years this direction was not strictly complied with.[z]

The statement addressed to the House of Commons is known by the name of the Indian Budget, and is intended to afford an opportunity to those members of the House who are specially interested in India to offer suggestions, or ask for information, upon the general condition of the country. It is delivered in a Committee of the whole House, and is followed by no application for any vote to

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[x] Com. Papers, 1867, vol. l. p. 580. 1864, p. 176. Hans. Deb. vol. clxxix. p. 582. *Ibid.* vol. clxxx. p. 944.

[y] Hans. Deb. vol. clxxxix. p. 341.

[z] See Smith, Parl. Remembrancer,

control or influence the taxation of India, but merely by certain formal resolutions, setting forth the actual revenue and expenditure in India for the past year. It usually gives rise to a debate upon the policy of the government in relation to India.[a]

On July 5, 1866, with a view to a stricter compliance with the requirements of the statute, the Under-Secretary for India (Mr. Stansfeld) laid upon the table of the House of Commons, for the first time, summaries of the detailed statements descriptive of the moral and material progress of India within the preceding year. This rendered it unnecessary to enlarge upon these topics upon the presentation to the House of the 'Indian Budget.'[b]

Indian accounts.

In 1868 it was decided, that the Indian Accounts, together with the Report of the Auditor-General for India thereupon, should be hereafter referred to the Standing Committee of Public Accounts, to be examined and reported on. Accordingly, on June 16, the audited East India (Home) Accounts for the year ending March 31, 1867, were referred to this Committee, with instruction to examine into them, and into the arrangements under which such accounts are audited. The Committee reported, on July 21, that they had no remark to offer upon the accounts; that they did not recommend that the Comptroller and Auditor-General should be at present required to audit these accounts; but yet they were of opinion that the present arrangement was not free from objection, 'as it unites, in one officer, the duty of auditing the accounts of the Secretary of State (and, if necessary, of disallowing charges authorised by him), and the examination, on behalf of the Secretary of State, of accounts with and claims upon the principal departments of government.' The evidence taken by the Committee shows that there will be no difficulty in assigning the audit of the India Home Treasury Accounts to the

[a] Hans. Deb. vol. clxxvi. p. 1852. [b] *Ibid.* vol. clxxxiv. pp. 718, 1091.

Comptroller and Auditor-General, if it should hereafter be deemed desirable.[c]

Indian accounts approved by House of Commons.

It is intended hereafter, that the Secretary for India, upon bringing forward his budget, should move a resolution, in addition to the formal resolutions now submitted upon that occasion, stating that the House, having seen the report of the Committee of Public Accounts upon the Indian Accounts, approves of the same. This will afford a better opportunity to the House, if so disposed, of challenging any particular item of Indian expenditure; without, on the other hand, asking the House in any way to vote such expenditure, because that would change, in an inconvenient manner, the relations between India and the Imperial Parliament in financial matters.[d]

Governor-General.

The internal government of India is entrusted to a Governor-General, who is the queen's representative, or viceroy, in that country. He is possessed of immense executive powers, but is entirely subject to the constitutional control of the sovereign, through the Secretary of State.

His Council.

The Governor-General is assisted in the discharge of his weighty and responsible functions by a Council, which possesses both executive and legislative powers. It is styled the Supreme Council for India, and is a re-organisation of the Legislative Council, which was first established in India by the Act of 1833. It is empowered, in its legislative capacity, to frame laws and regulations for the government of India. The Council is competent to advise the Governor-General upon all matters connected with the welfare and good government of India, but at the same time leaving him at full liberty to act upon his own responsibility in all cases where he may think fit to do so. The position of the Governor-General towards his Council has been 'likened to that of an absolute mon-

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[c] Rep. Com. Pub. Accts. 1868, pp. iv. 34–45.

[d] Secretary Northcote, Hans. Deb. vol. cxci. p. 1209. And see *ibid.* vol. cxcii. p. 1599; vol. cxciii. pp. 1852, 1870.

archy, where the king rules through responsible ministers, but yet rules himself.'[e]

The Supreme Council consists, at present, of five ordinary or executive members, who may be considered as ministers of the Crown in India, and of twelve additional members who, being incorporated with the Executive Council, transform it into a legislative body.

The Secretary of State for India, with the concurrence of a majority of his Council, appoints three of the ordinary members, and may also appoint the Commander-in-Chief in India as an extraordinary member of the Supreme Council; the other two are appointed by the queen upon the advice of the Governor-General. But certain special qualifications are required of all these councillors, and their tenure of office is during pleasure.[f] The first three must have had experience in the service of the crown in India, and, of the remaining two, one must be of the legal profession and the other must have a practical knowledge of finance.[g]

Departmental duties.

The administration of the Indian Government is conducted through separate departments, to wit, the financial, home, foreign, military, and public works departments, and each of the five ordinary members of Council is charged with the oversight and management of one or more branches thereof. Since Lord Canning's time it has been agreed that the business should be conducted much as it is done in the English Cabinet, each councillor settling by himself all minor questions in his own department, taking the opinion of the Governor-General on those only that are more important, and bringing before the whole Executive Council such questions merely as are of imperial interest. But the departmental system has not yet been fully carried out; the

[e] Indian Polity: A View of the System of Administration in India. By G. Chesney, Accountant-General to the Government of India. London, 1868, p. 151. And see Hans. Deb. vol. clxxxix. p. 1342.

[f] Act 24 & 25 Vict. c. 67, sec. 3.

[g] See Chesney, Indian Polity, p. 47.

Governor-General usually superintends himself the political business of the foreign and of the home offices, and no responsible head has yet been assigned to the Public Works Department.[h]

Legislative members.

The additional members of the Supreme Council are appointed by the Governor-General for a term of two years, and for legislative duties only, they having no right to attend the ordinary meetings of Council. They may be of any rank or profession in life, and either Europeans or natives. But at least half of them must be non-official persons.[i]

Meetings of Council.

The Governor-General may assemble his Council at any place within the territories of India; and the Governor, or Lieutenant-Governor of the presidency, province, or territory, wherein it may be convened, shall attend the same, for the time being, as an extraordinary member if he be governor of a presidency, but merely as an additional councillor for legislative purposes if of lower rank.[j]

The first Council under the Act of 1861 was convened at Calcutta. Besides the Governor-General, the Lieutenant-Governor of Bengal, and the ordinary councillors, it included a civil servant from each of the presidencies, recommended for a seat therein by the respective governors of the same; three native noblemen, and two Calcutta merchants of European origin; a proportion, as regards race, which continued to be observed until 1866. In 1867, another native of rank was added to the Council. Thus, for the first time since India became a British dependency, the employment of natives in the work of legislation has been legalised.[k]

The policy of inviting the co-operation of native talent in the government of India has been likewise introduced into the Legislative Councils of the presidencies, and

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[h] See Chesney, Indian Polity, pp. 146–152, 157. Hans. Deb. vol. clxiv. p. 587; *Ibid.* vol. clxxxix. pp. 1358, 1371.

[i] Act 24 & 25 Vict. c. 67, secs. 10, 11.

[j] *Ibid.* sec. 9. Hans. Deb. vol. clxiv. p. 589.

[k] West, Administration of Sir C. Wood, p. 24.

elsewhere, with the most marked success.[1] In 1867 various officers of rank throughout British India were called upon by the Governor-General to make confidential reports pointing out the opinions generally entertained by the natives, in regard to the relative superiority of the British or native systems of government. These reports were laid before Parliament.[m] Subsequently, a despatch from the Secretary for India to the Governor-General, urging the 'political necessity for opening up to natives of ability and character a more important, dignified, and lucrative sphere of employment in the administration of British India,' with enclosures to the same purpose, was communicated to the House of Commons.[n] The Bill submitted to Parliament by ministers in 1868, concerning the internal government of India, contained provision for the admission of natives into the covenanted civil service.[o]

Its proper functions.

The Legislative Councils of India, which were appointed under the Imperial statutes of 1833 and 1853, failed to work satisfactorily, or in harmony with the executive government. They misunderstood and abused the powers entrusted to them. The intention was to confer legislative functions merely upon the Governor's Council, and not to erect it into a species of parliament, with authority to discuss and redress grievances, refuse supplies, and the like. It endeavoured to usurp these privileges, so that a change in its constitution became necessary.[p] This change was effected by the Act of 1861, under which the Supreme

[1] Chesney, Indian Polity, pp. 165, 238, 265. Commons Papers, 1867-8, No. 39, p. 7. A similar policy has been followed in New Zealand, where, by an Act passed in 1867 (31 Vict. No. 47), four Maori, or native aboriginal inhabitants of the colony, were rendered eligible for election to represent the Maori race in the House of Representatives; and at the same time the Provincial Councils were empowered to authorise one or more Maori members to be elected thereto.

[m] Commons Papers, 1868, No. 108.

[n] *Ibid.* No. 178. See the debate on the East India Civil Service, on May 5, 1868. Hans. Deb. vol. cxci. p. 1838.

[o] See *post*, p. 587. See Chesney, Indian Polity, chap. ix. xi.

[p] Hans. Deb. vol. clxii. pp. 1162-1170. *Ibid.* vol. clxiii. p. 633; vol. clxiv. p. 586.

Council is now convened, and by which the paramount authority of the Governor-General is secured. He is empowered by this Act to make rules and orders for the transaction of business in his Council; and, in cases of emergency, to make and promulgate ordinances for the peace and good government of India upon his own responsibility; such ordinances, however, not to continue in force for more than six months.[q]

The formal assent of the Governor-General is necessary to the validity of all laws or regulations of the Council, whether or not he has been present at the passing thereof. No measure affecting the public debt, revenue, religion, the army or navy, or foreign relations of India, may be introduced into the Council without the previous sanction of the Governor-General; and any law or regulation of Council may be disallowed by the crown, upon the advice of the Secretary of State for India.[r]

Councils in the presidencies, provinces, &c.

By the Act of 1861, the governors of the presidencies of Fort St. George (*i.e.* Madras) and Bombay, were empowered to form Legislative Councils, after the model of the Supreme Council, by adding to their ordinary executive councils certain members, either of European or native origin, but one-half of whom must be non-official persons. These local legislatures may frame laws for the government of their respective presidencies, but may not discuss any matter which affects India generally without the previous sanction of the Governor-General.[s] The same Act authorised the Governor-General to establish similar councils, at any future period, for Bengal, for the North-Western and other Provinces, and in the Punjab respec-

[q] 24 & 25 Vict. c. 67, secs 18–24.

[r] *Ibid.* secs. 19–21. West, Admin. of Sir C. Wood, pp. 55, 154.

[s] 24 & 25 Vict. c. 67, secs. 28–43. In 1866 the Legislative Council of Madras consisted of ten members, of whom seven were official, and three unofficial persons. Of the latter, one was an European and two were natives. The Bombay Council had eleven members, viz. seven official and four unofficial; the latter consisting of three natives and one European. (Papers relating to Ceylon, Com. Papers, 1867-8, No. 39, p. 7.) In 1867, the Madras Council was increased to thirteen, and an additional native was added to the

tively.[t] At present, however, Bengal is administered by a Lieutenant-Governor, appointed by the Indian Government, whereas the Governors of Madras and Bombay are appointed by the crown. The Lieutenant-Governor of Bengal has no council, although that presidency is equal in extent and difficulty of control to the other presidencies. But the expediency of placing Bengal upon a similar footing to Madras and Bombay is now engaging the serious attention of the Imperial Government.[u] Members of Council in Madras and Bombay are not merely consultative, but each take different departments, superintend details, and receive numbers of persons on business who would otherwise have to go direct to the Governor.[v]

Proposed reforms in Indian administration.

Within the last two years reforms in our system of administration in India have been brought forward in the House of Commons, as well by independent members as by ministers of the crown. But the absorbing question of parliamentary reform, and the ministerial difficulties growing out of the same, have prevented any further legislation on this subject. A brief notice of the proposed plans for the improvement of Indian administration will not, however, be out of place in these pages.

On August 12, 1867, Mr. Ayrton moved, in amendment to the motion for the House to go into Committee to receive the financial statement for India, the adoption of a series of resolutions upon the subject of Indian government: (1) That the Governor-General of India should be empowered, with the sanction of the Secretary of State for India, to conduct the business of each department of government in concert with one or more members of his council, instead of the whole council. (2) That in order to insure better attention to the affairs of trade and agriculture, an additional member of the said Council should be appointed to superintend those affairs. (3) That the government of Bengal should be placed upon the same footing as the government of Bombay. (4) That one nominated and one elected member of the Council of the Secretary

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Bombay Council in lieu of one of European origin. See Colonial Directory for 1868.

[t] 24 & 25 Vict. c. 67, secs. 44, &c.

[u] Despatches, &c., on the Administration of Bengal, Commons Papers, 1867-8, No. 256. And see Chesney, Indian Polity, chap. iv.

[v] Secretary Northcote, Hans. Deb. vol. clxxxix. p. 817; and see p. 1349.

of State for India should cease to hold office at the end of each year. (5) That the members of the Council should retire in rotation according to their length of service, whether as members of the Council or as East India Directors. (6) That the existing practice of recording by resolutions of this House certain financial facts relating to India should be discontinued, and that, instead thereof, the estimates for all expenditure in Europe of the Secretary of State for India in council should be approved by a vote of this House before the same is incurred. The Secretary for India (Sir S. Northcote) showed that the present practice is actually in conformity with the first Resolution; and promised that the other resolutions should receive his most serious consideration, with a view to invite the attention of Parliament to the whole subject during the next session. Other members took part in the debate, after which Mr. Ayrton expressed himself satisfied with the assurances of the Secretary for India, and withdrew his motion.[w]

On April 23, 1868, the Secretary of State for India brought into the House of Commons two Bills, which were received and read a first time: (1) To amend, in certain respects, the Act for the better government of India; (2) To define the powers of the Governor-General of India in council to make laws in certain cases, &c.

By the first of these Bills it was proposed that the members of the Council of India (*i.e.* of the Secretary of State's Council) should —after the decease or retirement of the present councillors—no longer be elected or appointed during good behaviour, but for a term of twelve years, and should not be eligible for additional service thereon (afterwards altered to ten years, with the privilege of re-election in certain cases[x]); and that their salaries should be increased to 1,500*l.* a year, but without any retiring pension.

It was also proposed to alter the mode of appointing the ordinary members of the Governor-General's council, and of the several presidential councils, so that instead of such appointments being made by the Secretary for India in council, they should be made by the crown. Her majesty would of course exercise such power under the advice of the Secretary of State, who would naturally be influenced by the advice of the Governor-General in regard to the persons nominated.[y]

This Bill also provided for conferring a greater degree of independence upon the Auditor-General of Indian Accounts, and for regulating grants of superannuation in the Secretary for India's establishment.[z]

The other Bill was intended to afford to the Governor-General

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[w] Hans. Deb. vol. clxxxix. pp. 1340–1389.

[x] *Ibid.* vol. cxcii. p. 1892.

[y] Hans. Deb. vol. cxci. p. 1207.

[z] *Ibid.* pp. 1201–1209. Bill, No. 91.

greater facilities in overruling his council, in matters affecting the safety and good government of India.

To define the power of the Governor-General in council in making laws binding upon native Indian subjects living beyond the Indian territories.

To confer upon the Lieutenant-Governors, &c. of the Punjab, of the provinces, and of other parts of India having no legislature, power to propose regulations to the Governor in council, for legal enactment.

To erect the government of Bengal into a presidency, on the footing of Madras and Bombay, either with or without a council, as may be expedient to the Secretary for India in council.

And to permit natives to be appointed, under certain regulations, to offices in the Covenanted Civil Service of the crown in India, without being obliged to obtain a certificate from the Civil Service Commissioners.[a]

Owing to the political crisis which arose during this session, it was found impossible to proceed with general legislation; accordingly, after undergoing considerable discussion, these Bills were withdrawn.[b]

Departmental staff.

The permanent establishment of the Secretary of State for India in council was fixed by a declaration of the queen in council on June 30, 1860, upon a representation of the Secretary for India; and was afterwards revised by similar authority, on August 3, 1867. It consists of two Under-Secretaries, one Assistant-Secretary, and the fifteen members of Council above-mentioned. There is also a numerous staff of officers and clerks, who are appointed by the Secretary of State. The entire expenses of the establishment are defrayed out of the Indian revenues, even to the cost of the building erected for the accommodation of the India Office.[c]

The Secretary for India and one Under-Secretary are allowed to sit in the House of Commons; but the members

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[a] Bill, No. 92. Hans. Deb. vol. cxci. pp. 1210–1216.

[b] Hans. Deb. vol. cxcii. pp. 1598–1602, 1870. *Ibid.* vol. cxciii. p. 1870.

[c] 21 & 22 Vict. c. 106, secs. 15, & 16. Commons Papers, 1860, vol. lii. p. 227. *Ibid.* vol. xviii. p. 101. *Ibid.* 1867, vol. xxxix. p. 753. Hans. Deb. vol. clxxxvi. p. 1333. For particulars showing the independent position of the India Office towards all other departments of state, see Com. Papers, 1864, vol. vii. pp. 546–549.

of the Council for India are declared incapable of sitting or voting in Parliament.[d]

The India Office is divided into separate departments: one to conduct the correspondence, both civil and military; another, under an Accountant-General; and another under a Director-General of Contracts, with an Inspector of Stores subordinate to him.[e]

Routine of business.

Drafts of despatches intended to be sent to India are prepared by the secretary of the department to which they relate, revised by one of the Under-Secretaries of State, and then submitted to the Principal Secretary, who after altering them as he thinks fit refers them to a committee of the Council. The draft is therein considered and amended, if necessary, and returned to the Secretary of State, by whom it is laid before the Council, in such shape as he may please, for their consideration and approval. Every important despatch must be approved by the Secretary of State and signed by him, before it is sent. Those of minor consequence are passed by the chairman of the committees, or by the departmental secretaries, without reference to the Secretary of State.[f]

Position of Under-Secretaries.

The Under-Secretaries of State for India occupy the same position towards their chief as do similar officers in other departments. But, unlike the Secretaries to the Treasury and Admiralty Boards, they have no recognised place in the Indian Council, and are not permitted to join in the deliberations of that body. When Sir Charles Wood was Secretary for India he partially remedied this inconvenience, by directing that all papers should be referred to the Under-Secretaries, and that one of them should always attend the meetings of Council, so that he might at any rate hear the discussions which take place therein.[g] But an Under-Secretary is still debarred from participating in the proceedings of the Council, even in the

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[d] 21 & 22 Vict. c. 106, secs. 4, 12. And see *ante*, p. 265.

[e] West, Admin. of Sir C. Wood, pp. 12–14.

[f] *Ibid.* p. 12. Commons Papers, 1861, vol. v. p. 359.

[g] West, Admin. of Sir C. Wood, p. 16.

absence of his chief, which is regarded as anomalous and unsatisfactory.[h]

THE ADMIRALTY.

Origin of the Admiralty.

This department of State may be said to date its origin from the year 1512, when Henry VIII.—who had founded the naval dockyards at Deptford, Woolwich, and Portsmouth, planted and preserved timber for naval purposes, and made the sea service a regular profession—created an office for the transaction of naval affairs, and appointed commissioners to inspect the state of the ships of war and naval stores, and to report thereon to the Lord High Admiral, to whom the government of the royal navy was then entrusted.

The guardianship of the seas, and, as a consequence, the command of the naval forces, is by the common law vested in the crown. In early times the crown delegated this power to officers who were at first styled Guardians of the Seas, and afterwards Admirals. The office of Admiral thus forms one of the prerogatives of the crown, but is distinct from that of the sovereign, and is capable of being conferred, either partially or in full, upon a subject. At first it would appear that there were four Admirals, having charge of different parts of the coast, and answering to the four seas, as they were called, of England. However this may be, the first officer recorded to have been Lord High Admiral, or Admiral in full, was appointed in 1385.[i] The office of Lord High Admiral is one of such dignity and consideration, that it has frequently been conferred upon a member of the royal family, and occasionally retained by the king himself. It is only from the year 1405, however, that an uninterrupted series of these high functionaries can be traced.

Lord High Admiral.

In 1636 the office of Lord High Admiral of England was, for the first time, put into commission, the great

[h] Hans. Deb. vol. cxcii. p. 1598.

[i] Report of Committee, on Board of Admiralty, 1861 (Commons Papers, vol. v.), p. 41.

officers of state being the commissioners. During the Commonwealth, Admiralty affairs were managed by a Committee of Parliament. At the Restoration of the monarchy in 1660, James, Duke of York, was appointed by his brother, the king, to be Lord High Admiral, and he held the office for thirteen years. Afterwards, when he ascended the throne as James II., he again declared himself, in council, to be Lord High Admiral. In the interval of his appointment and reappointment, and subsequently upon the accession of William III., the Admiralty was a second time put into commission, pursuant to an Act passed for that purpose by the Revolution Parliament in 1690,[j] and which was enacted on account of the abuses of power by the Lords High Admiral, in the reigns of the Stuarts, and for the purpose of removing any doubts as to the complete and absolute transference of all the powers appertaining to the office in question into the hands of commissioners, whensoever it may please the crown to place it in commission. This Act would seem, however, not to have been brought into operation until two years afterwards, when the House of Commons came to the following resolution: 'Resolved, That it is the opinion of this Committee, that, in pursuance of his majesty's speech, the House be moved that his majesty be humbly advised to constitute a commission of Admiralty of such persons as are of known experience in maritime affairs; and that for the future all orders for the management of the fleet do pass through the Admiralty that shall be so constituted.' This is the origin of the Board of Admiralty, as it now exists; and with two or three brief exceptions the commission has endured under this statute from the reign of William III. until the present time.[k] The exceptions are as follows: first, for about four months in the year 1702, the Earl of Pembroke was appointed Lord High Admiral. His removal followed upon the accession to the throne of

[j] 2 Will. & Mary, 2nd sess. c. 2.
[k] Rep. on Board of Admiralty, p. 112.

Queen Anne, who immediately afterwards replaced him by her royal consort, Prince George of Denmark. Prince George held the office for six years until his death. Again, in 1827, H.R.H. the Duke of Clarence (afterwards King William IV.) was appointed Lord High Admiral on the retirement of Lord Melville. His royal highness, however, held the office for a very short period. He was not allowed to have a seat in the Cabinet, contrary to the invariable usage in the case of First Lords of the Admiralty. Certain professional men, and others, heretofore acting as Junior Lords of the Admiralty, were appointed to act as councillors to his royal highness, after the precedent established in the case of Prince George of Denmark; but the system was found to work so ill that, in less than eighteen months, the Duke of Wellington (then Prime Minister), was obliged to recall the patent of the Lord High Admiral, and revive the Board of Admiralty, agreeably to former usage.[1]

The Board of Admiralty.

The Commissioners consist of the First Lord and five Junior Lords. They form a board, and are commonly called, 'The Lords of the Admiralty.' They are appointed by letters patent under the great seal, during pleasure, 'Commissioners for executing the office of High Admiral of the United Kingdom of Great Britain and Ireland, and the dominions, &c., thereto belonging, and the territories or parts beyond the seas possessed by any subjects of the queen.' Under this patent, as interpreted by usage, the Admiralty Board conducts the administration of the entire naval force of the empire, whether at home or abroad, commands the royal marines, and has control over all the royal dockyards, and of an immense number of labourers employed therein in the building of ships and in the preparation of stores and *materiel* for the use of the naval service. It has also exclusive jurisdiction in respect to harbours, creeks, and inlets throughout the United Kingdom.[m]

[1] Haydn's Book of Dignities, pp. 151–165. Rep. on Board of Admiralty, 1861, pp. 104, 111.

[m] Rep. Board of Admiralty, pp. 108, 110, 152. For a graphic account of the multifarious labours of

Composition of the Board.

The Board is usually composed of eminent civilians and distinguished naval officers. It comprises a First Lord, who is a Cabinet minister, four naval lords, and a civil lord, who is usually a member of the House of Commons.[n] There are two secretaries, one of whom is permanent, and the other political. The political secretary is the organ of the board in the House of Commons, when the First Lord is a member of the House of Lords. Any two lords, with the secretary, constitute a quorum for the transaction of business; and an order signed by any two lords is equally valid as if signed by the whole board.[o] The First Lord and four Junior Lords only are eligible to a seat in the House of Commons at any one time.[p] But a seat in Parliament is not considered essential to the appointment, except, perhaps, in the case of the civil lord. Before the Reform Bill it was easy enough to obtain seats for two or three of the naval lords. Since then it has become much more difficult; and it has frequently happened that two or three of the naval lords have been out of Parliament;[q] consequently the position of the civil lord has become more important. It is, in fact, no advantage to a naval officer to offer him a seat at the board, if you also oblige him to get a seat in the House of Commons. It is not easy, and is very expensive, for naval officers to obtain seats. During

this gigantic department, see Mr. Lindsay's speech in Hans. Deb. vol. clxix. p. 818. And see Mr. Cobden's speech on July 22, 1864, condemning the recent great extension of government manufacturing establishments, for the production of warlike stores, clothing, &c., for the use of the Army and Navy. *Ibid.* vol. clxxvi. p. 1907.

[n] The number of Junior Lords has varied from time to time. From 1718 to 1822 there were six, and also a controller and a treasurer of the navy, all having (or being eligible to have) seats in Parliament. From 1822 to 1832 there were four Junior Lords, since when there have been always five. The Junior Lords, when in Parliament, give their assistance to government in the general conduct of public business, in like manner as the Junior Lords of the Treasury. Rep. on Off. Salaries, 1850, Evid. 2656–2662. The question of the composition of the Admiralty Board, and the preponderance therein either of the naval or the civil element, is one which rests altogether with the government; and an attempt to induce the House of Commons to pass resolutions thereupon, has been resisted as an encroachment upon the prerogative. Hans. Deb. vol. lxi. pp. 1061, 1070.

[o] Rep. on Board of Admiralty, p. 90.

[p] Act 2 Will. IV. c. 40. sec. 1.

[q] See Commons Papers, 1854, vol. xlii. p. 95.

nearly the whole of the Duke of Somerset's administration (1859–1866) none of the naval lords were in Parliament, and they were not required to get seats. It need never be a condition to their appointment, as it suffices, for all purposes of naval administration, to have the First Lord, the civil lord, and the political secretary in Parliament,[a] provided they are men of sufficient weight to represent the temper and wishes of the House of Commons at the deliberations of the board. Injurious consequences have resulted, in former times, from the naval lords having been selected, primarily, with reference to political considerations, and their ability to get returned to the House of Commons. It is not likely that this will be insisted upon in future.[b] In fact, with a view to prevent the injury to the public service resulting from frequent changes at the Admiralty Board, on the occasion of new administrations, the principle has been recently introduced of considering one of the junior lords as permanent. This rule, though not invariably acted upon, has been sanctioned to a great extent, with manifest advantages.[c] And here it may be remarked, that the fluctuating character of the board has, undoubtedly, given rise to many of the causes of complaint and mismanagement which have been directed against the Admiralty administration for several years past. In 1860, a royal commission was appointed to enquire into the control and management of her majesty's dockyards. This commission reported, early in 1861, that the dockyards were in a state of inefficiency,

Its defective constitution.

[a] Rep. on Off. Salaries, 1850, Evid. 2656, 2859. Rep. on Board of Admiralty, 1861, p. 49. Admiral Sir F. W. Grey's letter in the Times, April 20, 1867. But Mr. Disraeli, in 1853, gave his opinion in evidence before a committee of the House of Commons, that it was desirable that a majority of the members of the board should have seats in the House of Commons, in order to ensure that harmony which ought to exist between every branch of the administration and the House. He attributed the weakness of the Derby-Disraeli ministry, in 1852, in regard to its Admiralty Board, to the defective representation of the board in the House of Commons. See *ante*, p. 243.

[b] Rep. on Bd. of Admiralty, 1861, p. 72.

[c] Rep. on Misc. Exp. 1860, Evid. 1415.

attributable chiefly to the defective constitution of the Board of Admiralty, and to the existing organisation of the subordinate departments, all of which tended to prevent due responsibility in any quarter, and was wholly incompatible with effective and economical management. The commission made various recommendations, for the purpose of introducing a more efficient and responsible control;[d] and their report was referred, in the same year, to a committee of the House of Commons on the Board of Admiralty, which took voluminous evidence, and reported the same to the House at the close of the session, but without expressing any opinion thereon, having been unable to complete their enquiry. In the following session no attempt was made to re-appoint the committee, there being a general impression, both in the country and in Parliament, that the work of internal reform had been successfully undertaken by the department itself, and that many of the evils formerly complained of had ceased to exist.[e]

With the assistance afforded by the investigations of this committee—which included amongst its members Sir James Graham, confessedly one of the best departmental administrators ever known,[f] and who had twice filled the office of First Lord of the Admiralty—we will now consider, in detail, the functions of the Board of Admiralty, and the relative position and duties of the several members thereof.

How controlled by the Government.

And first, as respects the mode in which the department is controlled by the executive government.

It is the usage for the number of men required for the naval service of the year to be considered by the Cabinet,

[d] Rep. of Commission on Dockyards, Commons' Papers, 1861, vol. xxvi. p. 5.

[e] But see Hans. Deb. vol. clxix. pp. 662, 666. And *ibid.* vol. clxxiii. p. 1080, for a statement of the extent to which the recommendations of the Royal Commission had been carried into effect by government in 1864, and the principal points of difference in regard to the remaining recommendations.

[f] See Mr. Gladstone's eulogium on Sir J. Graham, in Hans. Deb. vol. clxvi. p. 529.

determined upon by them, and then formally declared by the queen in Council. The result is then communicated to the Board of Admiralty, upon whom it devolves to carry out the decision of the government, by increasing or diminishing the naval force, as the case may be; and to apply to Parliament to sanction the employment of the force required, by voting the necessary supplies for the maintenance of the same.[g]

Again, the manner in which her majesty's ships shall be distributed upon home or foreign service is a Cabinet question, and depends upon considerations with which the Lords of the Admiralty are sometimes unacquainted, and which are kept within the bosom of the Cabinet.[h] It is the Colonial Office and the Foreign Office that guides the Admiralty with respect to the strength of foreign squadrons.[i]

One or other of the principal Secretaries of State is the medium for conveying to the Board of Admiralty the queen's commands for the execution of any service which the government of the country may require. Every Secretary of State has co-ordinate and co-equal power, and any one of them conveying to the Admiralty, or to the Horse Guards, the queen's pleasure, must be implicitly obeyed by that department, which is, in fact, subordinate to all the Secretaries of State when they convey the royal commands. There is this distinction, however, between the Admiralty and the Horse Guards,—the former have the power of moving ships, &c., delegated to them under their patent, saving cases of exception where the queen's pleasure is notified by a Secretary of State. The Horse Guards do not hold by patent, but are distinctly subordinate, and the Commander-in-Chief never moves even a corporal's guard from one place in the kingdom to another, much less troops from home to the colonies,

[g] Rep. on Bd. of Admiralty, 1861, pp. 35, 325.

[h] Mr. Corry (First Lord of the Admiralty), Hans. Deb. vol. clxxxvi. p. 967.

[i] *Ibid.* vol. cxcii. p. 40.

without the authority of a Secretary of State.[k] The supreme authority of a Secretary of State, conveying the queen's pleasure, is instantly recognised and obeyed by the Board of Admiralty. If the Foreign Office require to send a fleet on any particular service, the queen's pleasure is conveyed through the Secretary of State for Foreign Affairs. If it be deemed advisable to despatch a ship of war to a colony, the queen's pleasure would be conveyed by the Secretary of State for the Colonies. If it be necessary to provide freight for the army, the queen's pleasure should be conveyed by a formal communication to the Admiralty, signed by the Secretary of State for War, or by the under-secretary. This is the constitutional course; although in practice, no doubt, the ordering of ships to a particular station is very much a matter of arrangement between the First Lord of the Admiralty and the Secretary of State.[l] After the first moving power has emanated from the supreme authority, the department of the Admiralty is immediately put into communication with the working department on whose behalf the service is to be undertaken; and the board becomes directly responsible in regard to the details of the service required, which remain always in the hands of the departmental chiefs, only that no change of plan should take place without the cognisance and approval of the supreme authorities.[m]

In proof of the supremacy of the executive government, we are told that during the administration of the great Lord Chatham, he took the correspondence with naval commanders into his own hands, and required the First Lord of the Admiralty to sign instructions which he did not allow him to peruse.[n] And in 1807, the principal

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[k] See *ante*, p. 542.

[l] Rep. on Off. Sal. 1850. Evid. 1553, 1554. Sir James Graham, Rep. of Com. on Transport Service, 1861, p. 42.

[m] *Ibid.* pp. 42-46. Rep. of same Committee in 1860, pp. 204, 207. And see Sir James Graham's evid. before the Sebastopol Committee, 1854-5, vol. ix. pt. 3, p. 260.

[n] Knight's Hist. of Eng. vol. vi. p. 227. Brougham, Sketches, &c. first series, vol. i. p. 24. Rep. on Mil. Organisation, 1860, p. 396.

members of the Board of Admiralty, in a document signed with their own hands, formally denuded themselves of all future knowledge and control of the secret expedition for the seizure of the ships at Copenhagen, and directed that the admiral in charge of the expedition should receive his instructions from the Secretary of State, without the cognisance of the Admiralty. The effect of this was that the First Lord, being a member of the Cabinet, was cognisant of the expedition, but that the other members of the board were in total ignorance about it.[o] After all, the Admiralty is but an executive board, and is necessarily subject, on occasions of emergency, to the supreme control of the crown, to be exercised through the Secretary of State, whose order, in such case, would even supersede the authority of the First Lord and of the whole board.[p]

Authority and position of First Lord.

This brings us to consider, secondly, the authority and position of the First Lord. By the terms of the patent creating the Board of Admiralty, every member of the same has equal powers and responsibilities with the rest of his colleagues; but by uniform practice, amounting to an unbroken prescription, the patent is otherwise interpreted, so as to confer the power and responsibility principally, if not altogether, upon the First Lord. The First Lord, in fact, exercises supreme and controlling authority, and is personally responsible for the whole naval administration, his authority being only limited by the necessity of carrying the naval lords with him in his measures, so long as they remain in office.[q]

The junior lords are responsible to the First Lord for the different departments which they superintend,[r] and they must also be considered as responsible to the service and to the country for their share in the naval adminis-

[o] Rep. on Bd. of Admiralty, p. 124. A similar instance occurred in 1815, the particulars of which are mentioned by Sir James Graham, *ibid.* See also pp. 156, 157.

[p] *Ibid.* pp. 218, 504.

[q] *Ibid.* pp. 8-10, 28. See Sir James Graham's evidence, *ibid.* pp. 103, 104, 135. And Admiral Sir F. W. Grey's letter in the Times, April 22, 1867, on the Board of Admiralty.

[r] *Ibid.* p. 44.

tration, and for the advice they have given to the First Lord in respect thereto.[s] A vote of censure in Parliament against the naval administration would affect the whole board, equally with the First Lord; they must therefore be considered as sharing equally with him in the credit or discredit of the same.[t]

His supremacy over his colleagues.

The First Lord, being a member of the Cabinet as well as head of the Admiralty Board, has the power of changing the board—a power not indeed to be lightly resorted to; but should differences occur which cannot otherwise be removed, the other members of the board are virtually dismissible by him. Or, such members thereof as continue to oppose his policy, must necessarily resign. The question being then practically presented for the decision of the Prime Minister, he would have to determine whether he would change his First Lord, or alter the composition of the board.[u] In consequence of the practical supremacy of the First Lord, though serious differences of opinion between himself and his colleagues have arisen, yet they very rarely lead to the retirement of the junior members of the Board, but the judgment of the First Lord ultimately prevails.[v] If required, the First Lord will obtain the sanction of the Cabinet, and the approval of the queen, to measures which his colleagues are unwilling to adopt on his sole recommendation.[w]

While it is admitted that the Board of Admiralty can only be worked efficiently by the First Lord exercising power to such an extent as to render the board really subordinate to his will, there are grave constitutional

[s] Rep. on Bd. of Admiralty, pp. 91, 162.

[t] *Ibid.* p. 56. It must be remarked, however, that when the naval administration is discussed in Parliament, with a view either to censure or approval, it is always spoken of as the administration of the First Lord, for the time being; and he is always praised or blamed, as the case may be, without reference to the other members of the board, who are never mentioned in this connection. *Ibid.* p. 143. And see Hans. Deb. vol. lxi. p. 1043.

[u] Rep. on Bd. of Admiralty, pp. 91, 135, 141.

[v] Cases cited, *ibid.* p. 184. And see Sir James Graham's evidence before the Sebastopol Committee, 1854-5, vol. ix. pt. 3, p. 261.

[w] Rep. on Bd. of Admiralty, p. 185.

difficulties in the way of revoking the existing patent and granting another, more in conformity with the usage under which the terms of the patent are interpreted and controlled. These difficulties were pointed out to the committee by Sir James Graham, and they appear to have been generally acknowledged by the executive government and by the leading statesmen of the day; so that while the Army administration has, within the last fourteen years (since 1855), been undergoing re-organisation on the principle of concentrated responsibility, both in theory and practice, no attempt has yet been made to alter the constitution of the Board of Admiralty.[x]

Should he be a naval officer?

There is no rule or usage which either requires or forbids that the First Lord of the Admiralty should be a naval officer. Since the Revolution of 1688, the true epoch of the commencement of Parliamentary government, there has been a certain proportion of naval lords at the head of the Admiralty; the larger proportion, however, have been civilians.[y] But inasmuch as it is essential, in a representative form of government, that the First Lord of the Admiralty should be a minister of the crown, it will rarely happen that a naval officer will be found in Parliament who is properly qualified for this office; it is therefore, of necessity, generally given to a civilian. Moreover, as a rule, naval First Lords have not been such successful administrators as civilians, and their appointment has not tended so much to bring naval knowledge to the Admiralty as it has to bring politics into the navy, and to occasion chief commands to be conferred for political reasons.[z] Naval officers, while they are the most able and trustworthy negotiators that the British government could employ in foreign parts, unquestionably do not make the best administrators in matters of a mixed naval and civil character, including the conduct of business

[x] *Ibid.* pp. 138–140. See Hans. Deb. vol. clxxxv. pp. 605, 616, 623, 639.

[y] Rep. on Bd. of Admiralty, p. 116.

[z] *Ibid.* pp. 46, 71. And see historical precedents cited by Sir James Graham, *ibid.* pp. 108, 109, 147.

in Parliament.[a] Sir James Graham was strongly in favour of a civilian being at the head of the Admiralty; and, in view of the House of Commons being now the great centre of power, he also considered it preferable that he should be a member of the House of Commons, of high parliamentary standing and experience. He regarded it as very objectionable and inconsistent with the discipline of the board, and the position of the First Lord, to permit either a junior lord or the parliamentary secretary, being subordinates, to represent the board in the House of Commons.[b] On the other hand, such a state of things cannot always be avoided, as it would be unwarrantable to resolve that a peer should be disqualified from being First Lord. In fact, it was admitted by Sir James Graham himself, that the most brilliant and successful naval administrations have been those in which the First Lord was a peer.[c] In the event of the First Lord being a member of the House of Commons, the Admiralty must be represented in the House of Lords by some colleague in the ministry. The centre of difficulty to a government is with the body that holds the purse-strings, which naturally leads to a predominance of Cabinet ministers in the popular assembly. Since the time of the Revolution, the First Lord has not unfrequently been in the House of Commons, and no difficulty has been felt on account of the department not being directly represented, by one of its own officers in the other House.[d]

In which House should he sit?

Duties of the First Lord.

The First Lord of the Admiralty has a very responsible and laborious office. His duties may be stated, in general terms, as follows:—First, the general supervision and control of every department in the service; secondly, the consideration and determination of all political questions, including all matters connected with the suppression of

[a] Rep. on Bd. of Admiralty, pp. 117, 143. See also the opinions of Sir F. Baring, and of Lord St. Vincent on this point, *ibid.* p. 164. And of Sir John Pakington, in Hans. Deb. vol. clxxviii. p. 698.

[b] *Ibid.* vol. clxi. pp. 1264-1269. Rep. on Bd. of Admir. pp. 104, 110.

[c] Report, p. 114.

[d] *Ibid.* p. 114.

the slave trade; thirdly, the settlement of all questions connected with naval expenditure, and the preparation of the naval estimates, which are signed by him; fourthly, all appointments to commands; fifthly, all civil appointments; sixthly, all promotions; seventhly, all honours and distinctions given to naval officers; eighthly, the Mersea conservancy, the state of foreign navies and intelligence; then, harbours of refuge, railways, new works, &c.[e]

The precise distribution of business amongst the other members of the board rests entirely with the First Lord, and it has varied from time to time. In the main, however, it is similar to that which was settled by Sir James Graham, after his appointment as First Lord of the Admiralty, in 1830,[f] and which will be described when treating of the duties of the junior lords.

May act without his colleagues.

By usage, the First Lord is empowered to act, in cases of necessity, without reference to his colleagues.[g] Certain papers, as, for example, recommendations for the commutation of the sentence of death, or for the mitigation of penal servitude; or for the removal of a naval officer from the half-pay list, are submitted for the royal sanction, signed by the First Lord alone.[h] But in minor matters of naval discipline, or where minor punishments are concerned, the recommendations to the crown proceed from the board collectively.[i]

Patronage.

The patronage of the Admiralty is principally in the hands of the First Lord, subject to the approval of the queen. The British navy and army are ostensibly commanded by the sovereign; accordingly, the choice of officers for all commands therein must depend upon regulations established by the responsible advisers of the crown, whose public characters are involved in the merits of all subordinate officers, in every branch of the public

[e] Rep. on Bd. of Admiralty, appx. No. 1, p. 639.
[f] *Ibid.* p. 317.
[g] *Ibid.* p. 365.
[h] *Ibid.* p. 41. Mirror of Parl. 1834, p. 2121.
[i] Cases cited, Report, p. 122.

service.[k] The patronage appertaining to the First Lord of the Admiralty is enormous. There are about nine thousand naval officers, and two thousand civil officers, who are dependent upon him for promotion.[l] He appoints admirals,[m] captains, commanders, and lieutenants, to separate commands. The step from post-captain to admiral is by seniority; but promotion to the rank of captain, and generally all promotions, except masters and warrant officers, rest with the First Lord. The First Naval Lord has usually the selection, with the First Lord's approval, of lieutenants and midshipmen, masters, pursers, and warrant officers. But none of these promotions are influenced, in the least degree, by political considerations, which are not allowed to interfere in the selection of officers for promotion, either in the naval or civil departments of the service, or for particular commands.[n] Great pains are usually taken to select the best men, whether for appointments or promotion.

[k] Rep. Bd. of Admiralty, p. 636.

[l] *Ibid.* p. 113.

[m] The ancient division of the flag list into three squadrons of red, white, and blue, was abolished in 1864. Flag officers are now only rear-admirals, vice-admirals, and admirals. The white flag is now the ensign of her majesty's fleet; the blue, that of ships of the Royal Naval Reserve; and the red, the ensign of the merchant service. Hans. Deb. vol. clxxvi. p. 258.

[n] See the Report of a Committee of the House of Commons in 1853, on dockyard appointments. This committee was specially charged to investigate certain alleged acts of corrupt interference with the rules in regard to appointments and promotions for the purpose of favouring the interests of the party in power. (Commons Papers, 1852–3, vol. xxv. p. 3. And see *ante*, vol. i. p. 414.) In 1858, when Sir J. Pakington was at the head of the Admiralty, he took effectual measures to prevent promotion in the dockyards being influenced by political favouritism. (Hans. Deb. vol. clxxxvi. p. 1372.) In 1860, when the Duke of Somerset was First Lord, a board minute was passed, based upon an Order in Council of March 11, 1853, expressly discountenancing the use of political influence in applications for appointments to office in the naval service; and another minute, to the same effect, but still more stringently worded, in regard to dockyard promotions. (Rep. on Board of Admiralty, pp. 36, 39, 95–98.) See Lord Grey's observations on the vast improvement which has taken place of late in regard to the principle which governs the exercise of patronage, in the navy and army. (Parl. Govt. new ed. p. 285.) In proof of the impartiality of the Palmerston administration towards employés in the dockyards, and of the independence of the employés themselves, it may be mentioned, that in February 1863, Mr. Ferrand (a Conservative) was elected as member of Parliament for the borough of Devonport, a place

Naval nomination and promotions.

The system of promotion and retirement in the Royal Navy is now regulated, for the most part, by Orders in Council. The nomination of cadets is principally vested in the Board of Admiralty; the First Lord having usually some sixty or seventy in a year, and each junior lord about five or six; but a flag officer, on being appointed to a command, nominates two, and a captain ordinarily, on commissioning a ship, nominates one. Certain nominations are likewise placed by the Admiralty at the disposal of colonial governments, and some are given for competition to certain schools. The age of entry is from twelve to fourteen. The cadets then commence their professional education and career. The system of naval promotion may be described generally as one of selection, from the rank of sub-lieutenant to that of captain, and of advancement by seniority from the rank of captain to that of flag officer; certain qualifications, however, being required of every candidate for promotion. The crown retains, of course, the right, by its prerogative, to advance a captain out of his turn; but in practice this power is rarely exercised. In time of war, eminent services may call for an extraordinary promotion; and even in time of peace, the government has the power, by Order in Council, to have recourse to promotion by selection, whenever a necessity may arise for the exercise of this prerogative.°

Some few promotions are made by the board; some for special services, others according to custom, as on an admiral hauling down his flag; but for these the First

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which contains large public establishments in connection with the Admiralty, against Sir F. W. Grey, a junior lord of the Admiralty, who, if the dockyard people had abstained from voting, would have been returned; but who had a majority of 150 dockyard votes recorded against him. (Hans. Deb. vol. clxix. p. 784. *Ibid.* vol. clxxiii. p. 910. Dod's Parl. Companion, 1864, pp. 109, 195.) For testimony as to the honourable conduct of Admiral Grey, in refusing to receive any deputation of dockyard men, or to promise to redress any grievances, during his canvass, see Hans. Deb. vol. clxix. p. 1030. See further, on this subject, *ante*, vol. i. p. 392, *n.*

° Report of Commons' Committee on Navy (Promotion and Retirement), 1863, pp. iii. vii.-ix. And index, p. 476. See also *ante*, vol. i. pp. 327, 329, 337.

Lord, as head of the department, must also be considered responsible.[p] All the higher appointments, whether naval or civil, appertaining to the Admiralty, the dockyards, &c., are in the gift of the First Lord, who in fact has the whole patronage of the navy, with the exception of the Vice-Admiral and Rear-Admiral of England, the Commissioners, Governor, and Lieutenant-Governor of Greenwich Hospital,[q] which are in the hands of the Prime Minister. But the First Lord would make no appointment to commands-in-chief, on foreign stations, of any importance, without previous communication with the Prime Minister. Promotions from rank to rank in the royal dockyards—wherein some 16,000 labourers, of various kinds, are employed[r]—are made upon the recommendation of the superintendents, agreeably to seniority and merit combined.[s]

It must be observed, however, that in the exercise of his patronage, the First Lord has not, like the Secretary for War, any exclusive authority; he can only act in conjunction with the board. All naval officers' commissions are from the Lords of the Admiralty, not from the queen; and like all their other acts, are not valid in the name of the First Lord alone, but require the formal signature of a second lord, and to be countersigned by the secretary. The commissions of officers of the marines are signed by a Secretary of State.[t]

[p] 'Board promotions are promotions made for distinguished service. Instead of being made by the First Lord alone, they are made by the board, and they are therefore looked upon as a greater compliment.' Rep. on Navy Promotion, 1863, p. x.

[q] By the Act 28 and 29 Vict. c. 89, the offices of Commissioners and Governors of Greenwich Hospital are abolished, and the government of Greenwich Hospital and of the schools thereof, as well as the lands and property belonging to the same, are vested exclusively in the Board of Admiralty; who are empowered to appoint such officers, &c. as they think fit. The expenses of the institution, and of everything connected therewith, to be annually voted by Parliament.

[r] Hans. Deb. vol. clxxvii. p. 1136.

[s] Rep. on Off. Salaries, 1850, Evid. 2684-2694. Rep. on Bd. of Admiralty, 1861, p. 159. Murray's Handbook, p. 265. The government patronage in the dockyards is now very small, as promotions are mostly under fixed rules. Hans. Deb. vol. clxxi. p. 670.

[t] Murray's Handbook, p. 266. Act 25 Vict. c. 4.

The appointment of naval cadets formerly rested entirely with the First Lord, subject to the candidate passing a standard examination. But according to present practice, the First Lord claims only one-half of such appointments, and the other moiety is divided between the junior lords and the first secretary. Every captain is allowed one nomination, and an admiral two.[u]

The salary of the First Lord of the Admiralty is 4,500*l.* per annum, together with an official residence. Beyond this he has no emoluments or advantages of any kind.[v] Salary.

We have next to consider the appointment and duties of the junior members of the Admiralty Board. They are five in number, and are all fully occupied in transacting the business of the department. Junior lords, how appointed.

When a new administration is formed, the person selected by the Prime Minister to be First Lord of the Admiralty communicates with him upon the choice of the other members of the board, and when they have agreed together upon certain naval officers and civilians as likely to constitute a good board, they submit the names to her majesty for approval.[w]

Of the five junior lords, four are always naval lords, two of whom are generally admirals.

Before the appointment of Sir James Graham, in 1830, to preside over the Admiralty, the junior lords had no special and distinct duties assigned to them, and the business was conducted by a very cumbrous and inefficient machinery. The control and the responsibility were alike divided, and there were endless delays in the transaction of business.[x] But this able administrator succeeded in effecting some valuable reforms in the departmental organisation. He introduced the system of concentrated responsibility, which—together with the best advice obtainable, to assist the judgment of the head—he declared Their duties.

[u] Rep. on Bd. of Admiralty, pp. 152, 201, 257.

[v] Parkinson's Under Government, p. 15. Rep. on Off. Salaries, 1850, Evid. 2672.

[w] Rep. on Bd. of Admiralty, pp. 50, 148.

[x] *Ibid.* pp. 131, 146.

to be indispensable to good administration. He divided the whole business of the department into five separate heads, and appointed one lord to attend exclusively to each class of matters. He maintained that no one man could conduct a great department like the Admiralty unless he made good choice of his instruments. This is unquestionable; his own eye cannot see, nor his own hand perform everything: he must see through the eyes, and work through the instrumentality of others. Much depends on the choice of the junior members of the board, who are the eyes and hands of the First Lord. If they do their duty diligently, and act faithfully by him, he is, or ought to be, through them, cognisant of everything, and must be supreme over all the five juniors, who are each subordinate, and co-ordinate under him. It was upon these principles that the reorganisation of the Admiralty was effected by Sir James Graham, and the scheme he introduced has stood the test of thirty years' experience, and met with the approval of successive chiefs of this great department of State.[y]

The arrangement of duties among the junior lords is as follows:[z] It is the province of the First Sea Lord to attend to the composition, distribution, and discipline of the British fleet, the preparation of orders to ships in commission, the steam navy, the advanced ships, the protection of trade and fisheries, dockyards, the appointment of commanders, coastguard and volunteers, pensioners, seamen riggers, naval rendezvous. Another sea lord has the appointment of officers under the rank of commander, punishments, courts-martial and courts of enquiry, prize and admiralty courts, marines and marine artillery, dockyard battalions, pirates, salvage, collisions at sea, and the Royal Naval College. Another sea lord superintends the victualling and store departments, transport, convict, and

[y] Rep. on Off. Salaries, 1850, Evid. 2703, 2860. See Rep. on Bd. of Admiralty, 1861, pp. 121, 127, 134, 142. See also Sir C. Wood's evidence, *ibid.* p. 342.

[z] See the distribution of business, in Rep. on Bd. of Admiralty, 1861, Appx. No. 1, p. 639.

emigration service, appointment of paymasters and clerks ships' libraries, signals, yard craft, and experiments, except in steam. Another sea lord overlooks the pension, hydrographic, harbour, and medical departments, medical surveys, officers' pay, debts, compensations and allowances, compassionate fund, admission to Greenwich Hospital, passages, pilotage, Humane Society, medals, and uniforms.

The Civil Lord superintends the departments of the Accountant-General of the Navy and of the Director of Engineering and Architectural Works, the mail packet service, the civil affairs of Greenwich Hospital, the educational, and minor branches of the service. By an order of the First Lord of the Admiralty (the Duke of Somerset), at the commencement of the financial year 1864–5, a change was made in the position and duties of the Civil Lord of the Admiralty. He is now called the Financial Lord; he signs the estimates that are presented to the House of Commons, and is considered to be in charge (under the First Lord) of, and to be responsible for advising him upon, all questions involving financial considerations; either alone, as in the case of works—of which department he is the superintending lord, or in concert with the superintending lord, as in the case of shipbuilding, stores, and other expenditure. The effect of this arrangement is, to place in the continuous knowledge of one of the parliamentary representatives of the Admiralty, all matters connected with expenditure. This change has been very carefully considered, and appears likely to work well.[a]

Financial Lord.

But this scheme of duties is liable to alteration, from time to time, according to circumstances. Such alterations would rest with the First Lord, after consulting the

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[a] Rep. Com. on Pub. Accts. 1865, Evid. 631–641. Hans. Deb. vol. clxxviii. p. 692. The junior civil lord, having a seat in the House of Commons, is familiarly known by the name of 'Boots,' within the walls of Parliament. Hans. Deb. vol. clvii. p. 1335.

other members of the board.[b] Each lord, while individually responsible for the details of his particular branch, consults the First Lord or the board, by whose delegation he acts, on all the larger questions which arise.[c] For this purpose, and to carry on routine business, the board meets daily, except on Saturdays.[d] But upon an emergency, orders can be given, signed by any two lords, and the secretary, without a formal board meeting.[e]

Board meetings.

The duties and functions of the board have been defined, by Sir James Graham, as follows:—Board meetings ought to be held constantly. All reserved points, from all the different departments, should be brought before the board by the superintending lord, as well as the current business of the day; and the First Lord, being always present, in the chair, should, before giving his opinion as to what the answer to a letter ought to be, or what the decision upon a matter submitted, first afford to every member of the board an opportunity of expressing an opinion on the matter before him, and should then state his decision—in the light afforded to him by the views expressed by his colleagues—and order the secretary to note it.[f] The present routine of business at the Admiralty Office agrees, in the main, with Sir James Graham's ideas; the difference being merely such as would confer greater personal authority upon the First Lord, and less upon the board in its collective capacity.

Routine at the Admiralty Office.

The daily routine at the Admiralty has been thus described by Admiral Sir F. W. Grey, who was senior Naval Lord of the Admiralty (1861–66):—The department is divided into ten branches, each having a chief clerk. On the arrival of letters, they are opened by the reader, in presence of a secretary, who reads and endorses upon them the name of the lord or lords to whose branch they

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[b] Report on Bd. of Admiralty, p. 28.

[c] Rep. on Off. Sal. 1850, Evid. 2705.

[d] Hans. Deb. vol. clxxviii. p. 692.

[e] Rep. on Off. Sal. 1850, Evid. 12.

[f] Rep. on Bd. of Admiralty, pp. 118, 133.

relate. Ordinary business is disposed of by the superintending lords, who make the necessary minutes on the papers, affixing their initials thereto. On any important question the superintending lord obtains from the heads of branches, and from the Record Office, any previous correspondence or other information he may require. When prepared to do so, he brings the subject before the First Lord, and such of his colleagues as are interested in it. The result of their deliberations and the decision of the First Lord are then embodied in a minute, to be brought before the board at its meeting, at noon. Thus each lord is prepared to bring forward all the business belonging to his branch which it may be necessary or desirable to communicate to his colleagues, or to discuss more formally at the board. The minutes as finally agreed upon receive the board stamp. In most of the important cases, the course to be followed is to a great extent previously decided by the First Lord, after consultation with the lords to whose branch the business belongs, and the board stamp is then little more than the formal authority for carrying out that decision.

The minutes are sent through the chief clerk to the branch which they concern. The letters or orders thereon are framed with the most rigid adherence to the minutes; and any deviation therefrom, or from established precedent, should be represented by the head of the branch, to the superintending lord, or to the secretary. When duly prepared, the letters are submitted to one of the secretaries for oversight and signature. The result is, that the business of the office is transacted with rapidity and regularity, while the daily meetings of the board, and the free and unreserved communications of the different members with each other, and with the First Lord, contribute materially to the efficient working of the system; thus combining complete unity of action with a well-defined responsibility. It would be easy to show by examples, adds Sir F. W. Grey, that this system, 'while it is

admirably adapted for carrying on the daily routine of a department charged with the most complicated duties, admits of the most rapid and vigorous action whenever an emergency requires it.'[e]

Board orders.

As a general rule, every board order, issuing from the Admiralty must be signed by two lords, and the secretary; and if proceeding from the sole authority of the First Lord, it is nevertheless requisite that the signature of another lord should be appended. If he cannot induce any other lord to take the responsibility of signing the order with himself, the First Lord has no alternative but to obtain, from the Cabinet and the Crown, a new board. In some very exceptional cases, however, board orders are signed by a single secretary. Mere letters, of course, are signed only by the secretary.[f]

First Lord supreme at the Board.

The technical rules of a board, apart from usage, are not observed at the Board of Admiralty; it is not usual for divisions to take place at board meetings, though there is no positive rule forbidding the practice. But votes are never taken for the purpose of overruling the decision of the First Lord.[g] The board is invaluable as a council of advice to the First Lord, but, as we have already seen, though in theory a governing body, each member under the patent constituting the board having equal powers and responsibilities with the rest, in practice the First Lord is virtually supreme.[h]

Owing to the multiplicity of business, a great deal must be left to the secretary of the Admiralty, much also to the charge of the junior lords. It is only the more important matters which are submitted to the First Lord. But much discretion, and mutual confidence, is necessary in carrying out a system so complex and laborious. Most of the ordinary routine business is transacted by the principal subordinate officers, who are all responsible, through

[e] Letter on 'the Board of Admiralty,' in the Times, of April 20, 1867.

[f] Rep. on Bd. of Admiralty, 1861, pp. 193, 236, 318.

[g] *Ibid.* pp. 125, 159, 173, 339.

[h] See *ante*, p. 597. Rep. on Off. Sal. 1850, p. 8. Rep. on Bd. of Admiralty, 1861, pp. 218, 504.

the superintending lords, to the First Lord.[i] But while the supremacy of the First Lord in the control of the Admiralty is unquestionable, and is essential to the complete carrying out of the principles of parliamentary government, nevertheless, the First Lord himself undoubtedly derives weight in Parliament, and in the opinion of the community, from the belief that he speaks and acts, not on his own sole responsibility, but with the concurrence of competent naval advisers. And in addition to the concentrated naval advice obtainable from its own members, the board has the power of appointing commissions of enquiry, composed of persons, either professional or otherwise, who may be deemed capable of affording valuable counsel on any doubtful question coming under the notice of the department. Moreover, the First Lord is at liberty, either with or without concert amongst his colleagues, to apply to any quarter whatever, for advice and assistance to aid him in forming a correct judgment on any matter.[j]

May seek advice elsewhere.

With these advantages, it is not surprising that the Admiralty is remarkable, in comparison with other departments of state, for the rapidity with which its work is transacted; and especially for the manner in which business is conducted at board meetings, without unnecessary discussion. Whatever faults may be found with the theoretical constitution of the board, it is undeniable that the entire system of Admiralty administration has, for several years past, been gradually improving; and it may now be considered as working, on the whole, satisfactorily, notwithstanding the complaints which continue to be made, from time to time, upon the subject.[k]

Progressive improvement at the Admiralty.

The principal defect in the present system, as an instrument of naval rule, has been stated by Sir John Pakington (who was First Lord during the Derby administration), to

[i] Rep. on Bd. of Admiralty, pp. 44, 45.

[j] *Ibid.* pp. 68, 168, 339.

[k] *Ibid.* pp. 56, 146, 160, 165, 174, 319. See the remarks of Lord Clarence Paget, on August 1, 1862, in Hans. Deb. vol. clxviii. p. 1146. And the debate on Mr. Seeley's motion, on Feb. 19, 1867. *Ibid.* vol. clxxxv. pp. 588-649.

Defects still to be remedied.

be this: That while the First Lord is practically supreme and responsible, in regard to things done, there is a lack of proper responsibility for things left undone. For example: the First Lord may have a strong opinion in favour of the adoption of certain improvements in the department, or service, but may meet with strenuous opposition from his professional colleagues, to which he may yield, without being convinced, and may justify his own course to the public by saying that he was unwilling to set aside the opinions of men who were generally better informed in naval matters than himself; while, in fact, his own views were those which ought to have prevailed. This leads to a system of compromise, which is wholly incompatible, so far as it may extend, with vigour of administration. Such a defect can only be remedied by defining more strictly the responsibility of the First Lord.[l]

It has also been urged that the board is defective, from the absence of individual responsibility for the practical administration of the several departments; personal responsibility being, to a great degree, superseded by the collective responsibility of the board, which is a very imperfect and unsatisfactory substitute for the distinct personal responsibility of each lord for the branch over which he presides. The remedy suggested for this evil is the introduction of the principle of permanence into the office of junior lords, assimilating their position to that of the permanent Under-secretaries of State.[m] Already this principle has been recognised; for example, the late Sir R. S. Dundas, First Naval Lord, who died on June 3, 1861, was a member of successive Boards of Admiralty, of different politics; and generally the board has not had such a decided political character of late years as formerly. Neither is it necessary that it should have, as in fact very few political questions come before the board. Sometimes two, sometimes one, of the old members are retained,

[l] Rep. Bd. of Admiralty, 1861, pp. 196, 197, 212.

[m] *Ibid.* pp. 514, 634.

on a change of ministry; although, be it observed, they are all formally reappointed. It is not considered advisable that they should be made permanent in any other sense, lest it should affect the responsibility of the First Lord.[n] Sir James Graham expressed himself in favour of such an arrangement, provided the members of the old board who may remain in office be not in Parliament, and opposed to the new administration. It is quite indispensable that any lord of the Admiralty, having a seat in the House of Commons, should be a political adherent of the party in power. This has not always been the case; during the existence of the old Navy Board it was otherwise, but it would now be regarded as imperative.[o]

New Admiralty Board.

Upon the appointment to office of the Gladstone Ministry, in December, 1868, they resolved upon effecting some important reforms in naval administration. On December 22, the New Admiralty Board was gazetted. It consisted of the First Lord (Mr. H. C. E. Childers, M.P.) and four Junior Lords, instead of five, as heretofore. Two of the Junior Lords are Admirals,—one of them being also the Controller of the Navy,—and the other two, members of the House of Commons; one of whom is a naval officer, and the other a civilian.

Apart from the question of organisation, there is one important feature of Admiralty administration which has attracted much notice in Parliament latterly, and which is confessedly susceptible of improvement, viz.:—the amount of expenditure incurred by the board in the construction and repair of ships.

Cost of ships, and Admiralty accounts.

On February 19, 1868, Mr. Seeley, a private member, succeeded in obtaining the appointment of a select committee of the House of Commons to enquire and report—first, as to the application of moneys voted by Parliament for the use of the Admiralty in the building, repairing, and equipment of her majesty's ships; and secondly, as to the accounts of the department, and more especially as to the method in which they should be prepared for presentation to the House.[p] On July 27 this committee made their report. They approved in the main of the form and construction of the accounts

[n] Rep. on Board of Admiralty, pp. 10, 11, 44, 48.

[o] *Ibid.* pp. 107, 131, 181.

[p] Hans. Deb. vol. cxc. pp. 890-924.

furnished to Parliament, but suggested certain improvements therein, and fuller explanations to be appended to the estimates. In regard to the other portion of their enquiry great differences of opinion were disclosed in the evidence taken, and in draft reports laid before the committee on behalf of the opponents and defenders of the board, as to whether the charges of a wasteful and improvident use of the moneys granted for Admiralty purposes, were well founded: but inasmuch as, in the view of the committee, no imputations rested on the character of the officers of the Admiralty, they did not feel able, so late in the session, to do more than report the evidence, and the observations thereon in the proposed draft reports, to the House.[q]

Secretaries to the Admiralty.

We have next to consider the position and duties of the Secretaries to the Admiralty. There are two, one political or parliamentary, who is usually appointed by the Prime Minister, and who vacates his office with a change of the ministry; the other permanent, who holds office during good behaviour.[r] The two secretaries have very important and responsible duties. They are always in attendance at meetings of the board, keep minutes of the proceedings, conduct the official correspondence, and communicate to the heads of the various departments of the Admiralty the official instructions of the board.

The permanent secretary is, moreover, a safeguard to prevent the individual junior lords from transgressing their ordinary powers, as it would be his duty to call the attention of the board to any act which was irregular or unauthorised. He is in direct communication with the First Lord every day.[s]

The permanent secretary may be either a naval officer or a civilian. But Sir James Graham, who had experience of both, gave a decided preference to a civilian for this office.[t] In like manner, the first, or parliamentary secretary may be either a civilian or a naval officer, but experience has shown that it is preferable he

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[q] Commons Papers, 1867-8, No. 469.

[r] Rep. on Board of Admiralty, 1861, pp. 107, 236. While in office together each secretary is responsible for the acts of the other. Mr. Stafford, ex-pol. secy. to the Admiralty, in Hans. Deb. vol. cxxvi. p. 883.

[s] Rep. on Board of Admiralty, 1861, pp. 47, 52.

[t] *Ibid.* p. 146.

should be a civilian, on account of his peculiar position at the board. He is, strictly speaking, the servant of the board, to attend all its meetings, and note down the decisions thereat; and he has no right to volunteer his opinions at board meetings, or otherwise attempt to exercise any co-ordinate authority. It has sometimes happened, when a naval officer of rank higher than that of members of the board has been appointed to this office, that he has been tempted to assume an authority beyond his position. At the same time, the true position of the first secretary is one of great trust and responsibility. It is important that he should have a seat in the House of Commons, and that he should be the political friend and confidant of the First Lord. As such, he has every opportunity of communicating confidentially with his chief, and bringing his views on any matter under his notice, without obtruding them informally.[u] The opinion of the secretary may also be regularly given, in writing, in the 'circulation papers' or minutes which are circulated among the members of the board, for the purpose of ascertaining their opinion on questions, prior to their being submitted for the decision of the board collectively.[v]

The duties of the parliamentary secretary vary considerably with the position of the members of the board. If the First Lord is in the House of Lords, it usually devolves upon the secretary to represent the department in the House of Commons; to move, explain, and defend the estimates, and generally to take charge of the financial business. Should, however, a junior lord be in the House of Commons, it is probable that he might undertake a large portion of this work because of his superior position to the secretary.[w] In point of fact, however, the parliamentary secretary is considered as the mouth-piece and organ of the department in the House of Commons;

[u] Rep. on Board of Admiralty, 1861, pp. 115, 145, 155, 189.

[v] *Ibid.* p. 190.

[w] See *Ibid.* p. 435.

unless the First Lord has a seat therein, when he is, of course, the representative, and takes charge of the more important matters, being assisted, as regards details, by the secretary.[x]

Salaries.

The salary of the First Lord of the Admiralty is 4,500*l.* per annum, with an official residence. The five junior lords receive 1,000*l.* per annum each, in addition to which three of them are allowed residences, another a sum of 200*l.* per annum, in lieu of a residence; but the civil lord has no residence or allowance in lieu thereof. The parliamentary secretary receives 2,000*l.* per annum, with a residence, and the permanent secretary 1,500*l.* per annum.[y] The committee on official salaries, in 1850, recommended that residences should be allowed only to the First Lord, the senior Naval Lord, and the first secretary; but this arrangement has not been carried out. It is of great importance that at least these three functionaries should always be at hand, to form a board and to act for the department, on any sudden emergency.[z]

Staff in this department.

Under the general direction of the secretaries the Admiralty Office is superintended by six principal officers of the navy, to each of whom is given a salary of 1,300*l.* per annum—300*l.* of which is in lieu of a house, and is to be deducted whenever an officer is in occupation of an Admiralty residence. These officers are as follows:—The Controller of the Navy (in whom is vested the entire responsibility of the dockyards;[a]) the Accountant-General of the Navy; the Storekeeper-General (who checks the

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[x] Rep. on Off. Salaries, 1850. Evid. 2704. Murray's Handbook, p. 266.

[y] Navy Estimates for 1868–9, p. 13. The First Lord, however, receives an allowance of 166*l.* per annum, and each of the junior lords, as well as the first secretary, an allowance of 110*l.* per annum—'in lieu of oil.' The second secretary receives 37*l.* a-year for the same purpose. Commons Papers, 1866, vol. xlvi. p. 1. Hans. Deb. vol. clxxxi. p. 1848. Navy Estimates for 1867–8, p. 11.

[z] Rep. on Off. Sal. Evid. 2869.

[a] Hans. Deb. vol. clxxiii. p. 1306. It was proposed by secretary Sir John Pakington, in 1867, to create a new office, to be called the Superintendent of Dockyard Accounts, whose duty it should be to co-operate with the Controller in the financial management and general oversight of his department, in connection with the

supply of stores and timber to the Controller of the Navy); the Controller of Victualling; the Director-General of the Medical Department; and the Director of Engineering and Architectural Works (who constructs the barracks for the marines, and all the great buildings connected with the dockyards). All these officers are independent of each other, but are responsible to the board for the general conduct and for all the details of the duties of their respective departments. They are always consulted upon every important measure affecting those duties, but they are subject to general directions from the superintending lord as to any particular service which they may be required to undertake. Whenever occasion calls for it the First Lord himself communicates directly with these officers. With the Controller of the Navy such communications are most frequent, affording to him constant opportunities of laying before the First Lord his views upon the state of the ships of the navy, and the measures he may deem necessary to maintain them in an efficient condition.[b]

There are also other minor but important departments, such as that of the Director of Transports, the Registrar of Contracts and Public Securities, and the Hydrographer.[c]

Each department is placed under the superintendence of one of the junior lords. All the subordinate officers hold office during pleasure; but this tenure is considered to be tantamount to that of good behaviour, as it is admitted that the power of removal should be exercised with great discretion, and certainly not upon changes of administration.[d]

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present Valuer, and Inspector of Dockyard Work. Hans. Deb. vol. clxxxv. pp. 614, 622, 625, 647. The idea has not yet been carried out; but see *Ibid.* vol. cxc. p. 914.

[b] Admiral Sir F. W. Grey, letter on the 'Board of Admiralty,' in The Times, of April 20, 1867.

[c] Navy Estimates 1868-9, pp. 13, 16, 26.

[d] Rep. on Board of Admiralty, pp. 118, 173. Hans. Deb. vol. clxxi. p. 669. And see *ante*, vol. i. p. 389.

The Transport Department.

Transport Office.

A select committee of the House of Commons on the Transport service, in 1861, recommended the creation of a distinct and separate Transport Office, to be under the responsible control of the Lords Commissioners of the Admiralty, for transport of every kind that might be required by the government to any part of the coast of Great Britain and Ireland, and to all the colonies and possessions of the British crown, including India, and to comprise all such services heretofore performed under the direction of the Admiralty, the War Office, the India Office, and the Board of Emigration. The new office to be conducted by permanent working commissioners with a competent staff of employés. Particulars in regard to the duties proposed to be assigned to these commissioners, and the advantages anticipated from the new system, will be found in the report of the select committee; although the committee, in recommending to the consideration of the House, and to the attention of her majesty's government, the general question of the proposed change of system, forbore to express any lengthened opinion on mere matters of detail, from a desire not to encroach upon the proper functions of the executive.[e]

The system as above proposed was not altogether new. During the Russian War, in 1854, when Sir James Graham was First Lord of the Admiralty, it proved that the branch conducted by the Controller of the Victualling and Transport services, under the supervision of one of the lords of the Admiralty, was quite inadequate to perform the increased duties of the Transport service satisfactorily. Accordingly, in February 1855, a separate Transport Board was established, which continued in operation until 1857, after the close of the Russian War, when it was abolished. It consisted of three working commissioners,

[e] Commons Papers, 1861, vol. xii. pp. 379-384.

one of them a naval officer, another a military officer, and the third a gentleman from the merchant service. It is now proposed to re-constitute this board, with enlarged powers, as a permanent department; a board being considered preferable, because it is necessary to represent different interests.[f]

Pursuant to the recommendations of the committee of 1861, the question of the Indian Transport service was referred to a departmental committee composed of officials belonging to the Admiralty, the War Office, and the India Office, who duly reported on the subject. Nevertheless, up to the present time the recommendations of the Commons' committee in regard to the proposed Transport Office have been but partially carried out. The War Office and the Admiralty are both favourable to the scheme, but it has been strongly opposed by the Indian department and by the Colonial Office.[g] Consequently the Transport service is still conducted as heretofore under the authority of distinct departments; although great improvements have been effected in the Transport business of the War Office and the Admiralty.[h]

On April 5, 1864, the House of Commons were informed that negotiations were in progress with a view to bringing the Indian Transport service between England and Alexandria under the control of the Admiralty.[i]

The Transport department of the Admiralty is presided over by a director of transports (who receives

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[f] Commons Papers, 1861, vol. xii. pp. 379, 448.

[g] See correspondence between the India Office and the Admiralty,—and between the Colonial Office and the Admiralty,—relative to the recommendations of this committee (Commons Papers, 1862, vol. xxxiv. p. 901; vol. xxxviii. p. 467. Hans. Deb. vol. cxc. p. 338.) The experience derived from the Abyssinian war, in 1868, wherein everything went on well but the Transport service, has revived the question, and will probably lead to the establishment of a transport system, 'which might be beneficially employed in times of peace, and be capable of indefinite expansion in time of war.' Secretary Pakington, *Ibid.* vol. cxci. p. 59. And see *Ibid.* vol. cxciii. p. 1247. But see Quar. Review, Jan. 1869, p. 216.

[h] Hans. Deb. vol. clxv. pp. 665, 705–708. *Ibid.* vol. clxix. pp. 657, 666.

[i] *Ibid.* vol. clxxiv. p. 445. But see *Ibid.* vol. clxxx. p. 1023.

1,200*l.* a year), assisted by a military officer for India and about twenty clerks.[j]

THE PRIVY COUNCIL.

Privy Council as an executive department.

In a preceding chapter a brief account was given of the Privy Council as the great constitutional council of the sovereigns of England, out of which the Cabinet, or select body of ministers unto whom the principal functions of government are now entrusted, has, in process of time, evolved. We have now to consider the present position and duties of the Privy Council as a department of state.[k]

Although the high and important powers which anciently belonged to the Privy Council—as the board wherein the whole business of the country was debated and determined in the presence of the sovereign—have been gradually curtailed, owing in part to the development of the authority of Parliament, and also to the more perfect organisation of the executive departments; and although the recognition of the special responsibility of the Inner Council or Cabinet, for advice tendered to the sovereign, has, to a great extent, changed the character of the whole body; nevertheless there still appertains to the Privy Council no inconsiderable amount of its original functions, both in the prosecution of public enquiries and the formal tender of advice to the sovereign thereupon, and also in the discharge of special administrative duties.

Inasmuch as the monarch of the United Kingdom can only act through Privy Councillors, or upon their advice, it follows that all the higher and more formal acts of administration must proceed from the authority of the sovereign in council, and their performance be directed

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[j] Navy Estimates, 1868–9, p. 16. Thom's Directory of the United Kingdom, 1868, p. 168.

[k] Many of the following particulars are substantiated by an official report on the Privy Council Office, in Commons Papers, 1854, vol. xxvii. p. 253.

by orders issued by the sovereign at a meeting of the Privy Council specially convened for the purpose.

Orders in Council.

No precise rule or definition can be made to discriminate between those political acts of the crown which may be performed upon the advice of particular ministers, and those which are properly exercised only 'in council.' The distinction depends partly on usage, and partly, in certain cases, upon the wording of Acts of Parliament. It may be assumed, however, that acts of the most general operation and importance are usually performed in council, while prerogatives affecting individuals, such as appointments to office, or the grant of pardons, are performed upon the advice of particular ministers.[1]

The subjects generally disposed of by the authority of an order in council have been already specified in a former chapter,[m] and it is needless to repeat the details therein enumerated. Suffice it to say that the subjects to which these orders relate usually come under the especial cognisance of some one department of the executive government, which is responsible for the expediency of issuing the order as well as for its general tenor and effect. The law officers of the crown are also invariably consulted upon such orders, and are responsible for their legality. It is necessary, however, that there should be a proper machinery for ensuring uniformity in this branch of quasi-legislation, by an adherence to precedent, and for bringing the business in hand under the notice of the sovereign. And also to provide for the proper framing of the order, in cases where no particular department is charged with this duty. These are some of the functions entrusted to the department of the Privy Council.

Declarations in Council.

When the matter to be determined in council relates to a mere question of administration, it is usual for what is termed a declaration of the queen in council to be made thereupon. For example, in creating additional Secre-

[1] Cox, Inst. p. 650.

[m] See *ante*, vol. i. p. 288.

taries of State, from time to time, and appointing the necessary establishments for the new departments, this procedure is resorted to, and forms the ground for the subsequent issue of patents to such officers.[n]

Furthermore, all declarations of, or public engagements by, the sovereign, all consents to marriages by members of the royal family, appointments of sheriffs[o] for England and Wales, and the like, are made by the queen in council.

Meetings of Council.

Meetings of the Privy Council were formerly held very frequently. They now seldom occur oftener than once in three or four weeks. They are always convened to assemble at the royal residence for the time being. At these board meetings, the whole of the business transacted by committees, including the Cabinet itself, which is, in strictness, a committee of the Privy Council, or, by particular departments of state, which may require the sanction of the queen in council, is submitted to her majesty; orders, or declarations, of council are made thereon, and are issued to the several branches of the government specially concerned, for the purpose of giving effect to the same.

Quorum:

The attendance of seven Privy Councillors at the least, with one of the clerks of the Council, by whose signature alone its acts are attested, used to be regarded (by custom) as necessary to constitute a council for ordinary purposes of state.[p] But since the death of the Prince Consort, a different practice has prevailed. Within three weeks of that melancholy event, the state of public affairs rendered a meeting of the Privy Council indispensable.

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[n] Thomas, Hist. Pub. Depts. p. 27. Commons Papers, 1860, vol. lii. p. 227.

[o] The sheriffs are annually nominated by the queen, at a meeting of the Privy Council. A list is submitted to her majesty containing the names of three fit persons for each county; the first of whom is usually chosen, unless he assign good reason for exemption. The queen pierces with a punch a perforation opposite the name of the person selected, and this is termed 'pricking' the sheriffs. Cox's Commonwealth, p. 391.

[p] Corresp. Will. IV. with Earl Grey, vol. i. p. 36.

Out of deference to the feelings of her majesty, a council was convened, on January 6, 1862, at which three Cabinet ministers only were present; namely, the Lord President of the Council, the Home Secretary, and the Secretary for the Colonies. Since then Privy Councils have not infrequently been held, at which fewer than seven members have been present, and these consisting solely of Cabinet ministers. It has been usual, however, that some members of the Privy Council, in addition to those who have seats in the Cabinet, should be summoned to attend. But this custom is not founded upon any principle, and can be dispensed with if necessary. No Privy Councillor presumes to attend upon any meeting of the Privy Council (or, of a Committee of Council) unless he is summoned, in her majesty's name, by the Lord President, acting under the authority of the Prime Minister. Upon ordinary occasions, summonses might be sent to the ministers, the great officers of the household,[q] and to the Archbishop of Canterbury. On extraordinary occasions, the ministers determine to whom the summonses shall be addressed. The whole council is rarely convoked; the last time it was called together was on November 23, 1839, to receive her majesty's declaration of her intended marriage. On this occasion eighty-three Privy Councillors were present.[r]

The issue of orders of council under Acts of Parliament, i.e. concerning vaccination, or the cattle disease, is provided for in the particular statute, which usually fixes the number of Privy Councillors to be a quorum for such purposes.[s]

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[q] Two instances have been cited, of the Duke of Somerset, and of the Earl of Albemarle, who, at different times, held the office of Master of the Horse, and retained the same for several weeks after the resignation of the ministries of which they formed a part, and yet ceased at this juncture to attend at meetings of the Privy Council; to which they had previously been summoned, by virtue of their position in the Royal household. Lord John Russell, in Mirror of Parl. 1835, p. 11.

[r] Commons Papers, 1847-8, vol. xviii. p. 299. Grey, Early Years of Prince Consort, ch. xi.

[s] See *post*, p. 630.

Committees of Council.

All the ancient functions of the Privy Council are now performed by committees, with the exception of the formal acts which are constitutionally required to emanate from that body, and which proceed from the authority of 'her majesty in council.'[t] The acts of these committees are designated as those of the Lords of the Council, to distinguish them from 'Orders in Council,' which are made by the sovereign at a meeting of the Privy Council. The persons to compose such committees are usually selected by the Lord President of the Council, who is responsible for appointing and summoning the same, for receiving their reports, and submitting them for the ratification of the Privy Council.

The 'Lords of the Council' constitute a high Court of Record for the investigation of all offences against the government, and of such other matters, chiefly of an extraordinary nature, as may be brought before them. They are empowered to administer oaths, and to commit offenders to any of the queen's prisons, on their own warrant, for safe custody, in order to bring them to trial before the ordinary tribunals: their jurisdiction in cases of treason being the only secret criminal procedure now known in England. But their power extends only to enquiry, not to punishment, and persons committed by their order are entitled to *habeas corpus*, in like manner as if they had been committed by an ordinary magistrate.[u]

It is competent to the sovereign in council to receive petitions and appeals from India and the Colonies, and to refer these or any matter whatever, to the consideration of a committee of the Privy Council, upon whose report the decision of the sovereign in council is pronounced. Such a reference may be made upon any petition or claim of right, or for the redress of any grievance which does not come within the jurisdiction of other courts, or depart-

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[t] Macqueen, Privy Coun. 674, *n.* [u] Cox, British Commonwealth, p. 390.

ments of state. If the matter be one that is properly cognizable by a legal tribunal, it would be referred to the Judicial Committee of the Privy Council, which by the Act 3 & 4 Will. IV. c. 41, in addition to its ordinary functions as a court of appeal from the decisions of courts of law, is empowered (by section 4) to consider 'any matters whatsoever' that the sovereign shall think fit to refer to it.[v] In order to increase the efficiency of this tribunal, it is customary to summon to the Privy Council judges and men of eminence in every branch of legal study, expressly that they may assist at the deliberations of the Judicial Committee.[w] Whenever it may be desirable that persons already holding the rank of Privy Councillors, but who do not ordinarily belong to the Judicial Committee, should attend at any particular sittings thereof, a letter is addressed to them by the clerk or registrar of the Privy Council to inform them of her majesty's pleasure, in addition to the usual summons which is issued by order of the Lord President.[x] If the matter to be investigated be not of a legal nature, it would be referred to an ordinary committee.

Examples of investigation by Committees of Council, in cases not criminal, are found in the enquiry respecting the birth of the male heir of James II., into the insanity of

[v] See Bowyer, Const. Law, p. 127. And Hans. Deb. vol. clxxxiv. p. 1281. *Ibid.* vol. clxxxv. p. 871. By a proviso to clause 21 of the Act 3 & 4 Will. IV. it is declared that nothing therein contained shall impeach or abridge the existing jurisdiction and authority of the Privy Council, its constitution or duties; except so far as the same are expressly altered by the said Act.

[w] Macqueen, Privy Council, p. 688. Macpherson, Prac. of Judicial Committee, p. vii. It is noticed by Sir Harris Nicolas, that so far back as the reign of Henry VIII. there were certain persons termed 'the King's Ordinary Counsellors,' whose duties seem to have been strictly confined to the performance of legal business; from which he infers that 'the Privy Council must then, as now, have consisted, in practice, of two classes, namely, of the King's Ministers, and of those who were not usually and as a matter of course consulted on political affairs, and who merely acted as judges to try particular causes.' Preface to Pro. of Privy Council, vol. vii. pp. xvi.–xxiii.

[x] Return to address on Ecclesiastical Appeals Commons Papers, 1866, vol. lv. p. 51. See the testimony of Sir Roundell Palmer, in favour of the constitution of the Judicial Committee and its efficiency as a legal tribunal. Hans. Deb. vol. clxxxv. p. 855.

George III., into the claim of Queen Caroline to be crowned as Queen Consort of George IV., and into certain alleged clandestine or illegal royal marriages.[y]

In 1813, the Prince Regent referred the subject matter of the conduct of the Princess of Wales, together with all the papers emanating from the commissioners who were charged with the 'delicate investigation' in 1806, to twenty-three Privy Councillors, including the Cabinet ministers, the three Archbishops, the Bishop of London, and the principal judges, with instruction to report their opinion whether it was fit that the intercourse between the Princess of Wales and her daughter, the Princess Charlotte, should continue to be subject to regulations and restrictions.[z]

In 1863, under the authority of an Act of Parliament, the question of the site of the Assize Town for the West Riding of Yorkshire was referred to a Committee of Council, to consider and advise upon, in order that it might be determined by the queen in council.[a]

Previous to the coronation of the English monarchs, a committee of the Privy Council is appointed to sit, as a court of claims, to receive applications and determine upon all privileges claimed by any persons in connection with that state ceremonial. In reference to the proceedings of this committee, it has been alleged that in a constitutional point of view the Cabinet were only responsible for the selection of the Privy Councillors who should compose the committee; and that the committee itself was solely responsible to Parliament for the advice they might give, or decisions agreed upon in the matters referred to them.[b]

It is seldom that general references to committees of

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[y] Murray's Handbook, p. 107.

[z] Edinb. Rev. vol. cix. p. 170.

[a] Hans. Deb. vol. clxxiii. p. 809. An attempt was afterwards made to induce the House of Commons to address the crown to reverse the decision of the Privy Council in this matter; but it did not succeed. *Ibid.* p. 817. See *ante*, vol. i. p. 269.

[b] Lord Holland, in debate in House of Lords, August 11, 1831, 'The Coronation of William IV.'

the Privy Council are now made; or that the examination of witnesses upon oath takes place. But the practice has always prevailed, and still continues, of referring particular questions, or whole classes of subjects, to such committees.[c] Some of these committees are standing and permanent bodies, as, for example, the committee for trade, the committee on education, and the judicial committee. Of these, the committee for trade has become, both in fact and in name, a separate department of state. The committee on education, and the judicial committee, are still connected with the Privy Council Office, at least through their subordination to the Lord President. Standing committees.

The judicial committee of the Privy Council has jurisdiction in appeals from all colonial courts. It is also the supreme court of maritime jurisdiction, and the tribunal wherein the crown exercises its judicial supremacy in ecclesiastical cases. Since the establishment of responsible government in most of the British Colonies, the supreme interpretation and application of the law upon appeal to the mother-country, is wellnigh the sole remaining exercise of power retained by the crown over the dependencies of the empire; and it is one which the Colonies have hitherto shown no disposition to throw off.[d] But the several Lords President 'have uniformly declined to recommend her majesty to refer abstract questions of law to the judicial committee.'[e] Judicial committees.

The Attorney and Solicitor-General are bound to attend at meetings of committees of the Privy Council when required, as assessors, to advise the committee on points of law, or to act as counsel for the crown.[f]

If any difference of opinion arises between the members of a committee of council upon the matter referred to them, no reasons can be promulgated by the dissentient Reports.

[c] Commons Papers, 1854, vol. xxvii. p. 254.

[d] See Macpherson's Practice of the Judicial Committee, 1860. Edin. Rev. January, 1869, p. 63.

[e] Votes and Proceedings of Leg. Assembly of Victoria. Second Session, 1866, vol. i. C. No. 8, p. 13. And see *post*, p. 759.

[f] Campbell, Chancellors, vi. 101.

minority, because, by Privy Council practice, the advice agreed upon by the majority is submitted to the sovereign as the report of the whole committee.[g]

Suggestion that committees of Council might be used for other public purposes.

In view of the difficulty experienced by successive administrations in framing a new Reform Bill which should meet with acceptance from Parliament, it was suggested by Earl Grey[h] that resort should be had to this ancient and undoubtedly constitutional machinery. He proposed that the queen should nominate a committee of her Privy Council, to consist of members taken from different political parties, to consider and report upon a measure of Reform. If necessary, prominent party leaders might, with great propriety, be made Privy Councillors, for the purpose of enabling them to serve on this committee. Should the committee, or a majority of them, concur in a report recommending a plan of Reform, suited to the public requirements, this report, after being approved of by the queen in council, upon the advice of ministers, might be made the basis of a Bill to be submitted to Parliament. Earl Grey cited a precedent for such a proceeding in the case of the Australian constitutions, the consideration of which was referred, in 1850, to the full committee of Council on Trade and Plantations,[i] but with the difference that this committee was exclusively composed of members of the administration, and their political supporters. This proposal was undoubtedly valuable, but it was not generally approved; the objections to it were thought to be very formidable, sufficiently so, perhaps, to outweigh the obvious advantages of the plan.[j] The question of parliamentary reform has since been disposed of, by the joint action of the Ministers of the Crown and Parliament. Meanwhile, in a new edition of his essay, published in 1864, Earl Grey reiterated and enforced his proposition by additional arguments. He

[g] Edinb. Rev. vol. cxxi. p. 170.
[h] Parl. Govt. (Edin. 1858) p. 152.
[i] See *ante*, p. 521.
[j] These objections were stated, with great force, in the Edinb. Review, vol. cviii. p. 275.

further recommended, in view of the notorious inability of ministers of the crown to find leisure for the due preparation of measures to be submitted to Parliament for the amendment of existing laws, that the Privy Council should be systematically employed in preparing business for Parliament. Committees of the Privy Council, presided over by a Cabinet minister, might undertake, with peculiar advantage to the public interests, much of the work which has hitherto been done by less formal departmental committees, or by royal commissions, provided a sufficient number of men of experience and ability were appointed Privy Councillors, with annual salaries to compensate for the time and labour to be expended in such a service.[k] This suggestion, as proceeding from a statesman of Earl Grey's experience, is, at any rate, deserving of serious consideration.

Public enquiries.

If it be necessary to conduct enquiries at a distance from the metropolis, for governmental purposes, it is customary for persons to be sent to conduct the same by an order of the Lords of the Council; as, for example, medical enquiries in respect to quarantine; or enquiries into the merits of applications for municipal charters, under the provisions of the Municipal Corporations Act.[l]

Public health.

By the Public Health Act of 1858, the Privy Council was charged with certain duties and responsibilities for the encouragement of the practice of vaccination throughout the empire; with the oversight and direction of local authorities throughout the kingdom, in matters affecting the preservation of the public health; and generally to make enquiries and regulations for the furtherance of that object amongst all classes of the community, especially amongst those who are engaged in industrial pursuits. The interference of government in matters affecting the public health dates from the calamitous visitation of the cholera throughout the United Kingdom, in the summer of 1831. A Central Board of Health was formed at

[k] Grey, on Parl. Govt. New ed. pp. 270, 323.

[l] Commons Papers, 1854, vol. xxvii. p. 254.

that time by the authority of the Privy Council, which operated most beneficially in the enforcement of proper sanitary regulations. Since then experience has suggested a vastly superior organisation for the furtherance of this desirable object, whereby the health and morals of the people have been greatly improved, and the average duration of life considerably prolonged. The Public Health Act of 1858 is now administered by a permanent sub-division of the Privy Council, known as the Public Health department, which may consist of any three of the Lords of the Council, the Vice-President of the Committee of Council on Education being one. These functionaries are authorised to appoint an officer, styled the Medical Officer of the Privy Council, who is required to report annually to the Privy Council upon the subjects above mentioned. His reports are directed to be transmitted to Parliament; and will be found in the series of sessional papers. They are exceedingly important, and abound in practical suggestions of great value.

Veterinary department.

Under the Contagious Diseases (Animals) Act of 1867, a new department has been recently organised, styled the Cattle Plague or Veterinary department. This Act provides that the powers of the Privy Council, so far as regards the issuing and revocation of licenses under an order of Council, may be exercised by 'any two' of the members of the Privy Council.[m]

President of the Council.

The office of Lord President of the Council is one of great dignity and importance. It was created in the reign of Henry VIII.[n] The Lord President presides over the department of the Privy Council, and has the patronage of the entire establishment appertaining thereto. He sits next the sovereign at the council-table, to propose the business to be transacted, and to take the royal pleasure thereon. He has the general superintendence and control

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[m] 30 & 31 Vict. c. 125, sec. 4. Hans. Deb. vol. clxxxix. p. 999. And see Civil Service Estimates 1868-9. Class II. p. 36.

[n] See Palgrave, on the King's Council, p. 98.

of the education department. Besides his duties at the education office, which usually take up a comparatively small part of his time, he has duties in connection with the preservation of the public health, and in framing minutes of Council upon subjects which do not belong to any other department of state to prepare. He is also responsible for appointing and summoning such special committees of Council as may be required from time to time, and for receiving their reports.

The Lord President is usually, though not necessarily, the leader of the government in the House of Lords, when, as is generally the case, he is a member of that Chamber.[o]

His salary is 2,000*l.* per annum, and his tenure of office dependent upon that of the ministry of which he is a member.

Official establishment.

The clerks of the Council were formerly two in number, but a vacancy occurred in 1859 which has not since been filled up. The clerk's salary is 1,400*l.* per annum. He is *ex-officio* secretary of all committees of Council, even when the duties are exclusively performed by assistant secretaries. He is appointed under the Great Seal, and holds office during pleasure. He is assisted by a deputy and a small staff of clerks. The general duties of the department consist in attendance upon councils and committees, in framing minutes, orders, and proceedings of Council, and in conducting the official correspondence.[p] There are separate establishments, subordinate to the Privy Council Office, in relation to public health, the cattle plague, and quarantine.[q]

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[o] Report, Commons' Com. on Education, 1865. Evid. 51-53, 634, &c. 2311. The only occasion upon which this office was held by a member of the House of Commons, was when Lord John Russell filled it in 1854. See *ante*, p. 364.

[p] Murray's Hand-book, p. 109. Rep. on Official Salaries, 1850. Evid. 122, 325, 1259. Civil Service Estimates, 1868-9. Class II. No 14.

[q] Civil Service Estimates, 1868-9. Class II. No 14. In regard to probable reductions in these departments, see Hans. Deb. vol. cxciii. pp. 1194, 1288.

Education Committee of the Privy Council.

Origin of Education Committee.

A committee of the Privy Council with authority to provide 'for the general management and superintendence of Education,' was first appointed, by order in Council, in 1839, and is now regulated by various minutes of Council, which have been submitted to Parliament from time to time.[r] As early as the year 1833, a sum of 20,000*l.* was voted by Parliament for the promotion of education in Great Britain; but it was not until 1839, that a separate establishment was created to supervise the distribution of the moneys granted for educational purposes. At first, this committee was altogether subordinate to the Privy Council, and merely consisted of a few Cabinet ministers, who were empowered to meet together in order to dispose of the very small sum which was appropriated in behalf of education. But in 1853, pursuant to the report of a Royal Commission appointed to consider of the subject, an Education Department was organised, and was placed under the supervision of the Lord President of the Privy Council, with a secretary, two assistant secretaries, and numerous clerks.

In 1856, in consequence of suggestions made in the House of Commons by Sir John Pakington, a vice-president was appointed, by order in Council, under the authority of the Act 19 & 20 Vict. c. 116. This functionary is a member of the administration and a Privy Councillor, but is not a member of the Cabinet. He is empowered by the said Act to sit in the House of Commons, in order that the department may be properly represented in that House,[s] and subject to the supreme authority and general oversight of the Lord President, he is entrusted with the active administration of the department.[t]

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[r] Rep. of Commons' Com. on Education, 1865. Min. of Evid. 2392.

[s] *Ibid.* 1887.

[t] Report on Misc. Expend. 1860, p. 21. Hans. Deb. vol. clxxv. pp. 374, 377, 383. Rep. Com. on Education, 1865. Evid. 827, 828.

The importance of this change, and the extended sphere of the operations of the Education Committee, will be apparent upon referring to the great and increasing appropriations by Parliament for the encouragement of education. From 1838 to 1841, only 30,000*l.* per annum was voted in aid of public education in Great Britain. It then went on rapidly increasing, until in 1868, the sums appropriated on behalf of public education in Great Britain alone amounted to 842,554*l.* (This is exclusive of the grant on behalf of Science and Art in the United Kingdom, which has likewise increased, from 1,100*l.* in 1841, to 239,290*l.* in 1868.[u]) It must be borne in mind that this vast appropriation for educational purposes is in addition to the expenditure from endowments, and from voluntary subscriptions to schools. Taking these into account, it has been estimated that the annual expenditure on behalf of elementary education in the United Kingdom (exclusive of Ireland, for which separate provision is made) amounted, in 1863, to at least two million pounds sterling.[v] Since then, by the

Expenditure for education.

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[u] Civil Service Estimates, 1868–9, Class IV. Nos. 8, 9.

[v] Sandford's Bampton Lectures for 1861, p. 148. And see the Statistical Tables appended to the Report of the (Duke of Newcastle's) Commission on Popular Education in England, Commons Papers, 1861, vol. xxi. pt. i. p. 578. This Report, which, with its appendixes, comprises six folio volumes, is one of the most thorough and exhaustive investigations ever made into any subject. It describes the various institutions, whether in connection with the government, or with the great charitable societies of the country, by which the education of the poor is superintended and assisted, and the different classes of elementary schools. It includes accounts of reformatories, naval and army schools, and training colleges, and suggests important reforms in the management of the same. (See Hans. Deb. vol. cxci. p. 106.) This commission was followed up by another, of which the Earl of Clarendon was chairman, which was appointed by letters patent on July 18, 1861, to enquire into the condition, &c., of the nine principal schools in which boys of the middle and upper classes are educated, viz.:—Eton, Winchester, Westminster, Charter House, St. Paul's, Merchant Taylors, Harrow, Rugby, and Shrewsbury. This commission reported in 1864. Their report, with appendix and evidence, occupied four volumes. (Com. Papers, 1864, vol. xx. xxi.) Pursuant to the recommendations of this commission, a Bill to make further provision for the good government and extension of the public schools of England, was presented to the House of Lords, in the session of 1865, by the Earl of Clarendon, the chairman of the aforesaid com-

operation of the new Revised Code, this immense expenditure has been checked, and considerably reduced. But the additional grants, in 1868, on behalf of day and evening schools, in England and Wales, have again increased the amount.[w] Before proceeding to notice the particular duties assigned to the Educational Department, it will be necessary to explain the position and authority of the presiding officers.

As a natural consequence of the additional duties which have devolved, of late years, upon this department, its constitution has undergone a gradual change. The responsible heads for administrative purposes are no longer the ordinary members of the Education Committee, but the Lord President and the Vice-President conjointly.

Composition for Education Committee.

The members who compose the Committee of Council on Education are usually (with the exception of the Vice-President) members of the Cabinet.[x] Accordingly, they vary with every change of ministry. They are always

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mission. (Hans. Deb. vol. clxxviii. p. 632.) This Bill was fully discussed and extensively modified in both Houses, and in select committees thereof, until the session of 1868, when it became law (31 & 32 Vict. c. 118). The Act is limited to the seven principal public schools, and does not extend to St. Paul's or Merchant Taylors. Finally, on December 28, 1864, another commission was appointed to enquire into all educational institutions in England and Wales not included within the limits of the former enquiries. This was a very wide range: it comprised, in fact, all schools (other than the nine above mentioned) which educate children excluded from the operation of the parliamentary grant; whether endowed, private, or proprietary schools for boys or girls. The report, a most voluminous and exhaustive one, was presented to Parliament in 1868. With the minutes of evidence and appendix, and reports of assistant commissioners on secondary education in Canada and in certain foreign countries, it fills twenty-four octavo volumes. It being impossible to legislate immediately on the subject, a Suspensory Act was passed, in 1868, to provide that any person appointed to any mastership, &c., in any of the endowed schools referred to in the aforesaid report, shall take the office subject to any provisions that may be enacted hereafter respecting the same (31 & 32 Vict. c. 32).

[w] Hans. Deb. vol. clxiv. p. 295. *Ibid.* vol. clxxiii. p. 1355. The vote for 'public education, Great Britain,' for the year ending March 31, 1868, was only 705,865*l.*, whilst 804,002*l.* was voted for the same service in 1863-4. For the year 1868-9 the estimates were increased to 842,554*l.*; but owing to the abandonment by the government of their Education Bill, they only took a vote for 781,324*l.* Hans. Deb. vol. cxcii. p. 1134.

[x] Rep. Educ. Committee, 1865, Evid. 227.

selected by the Lord President of the Council, and are chosen partly with reference to the offices they hold in the executive government, and partly on account of their personal interest in educational questions. At the present time, by declaration of the Queen in Council, on Dec. 12, 1868, the committee consists of the Lord President, the Vice-President, the First Lord of the Admiralty, the Secretaries of State for the Home Department, for the Colonies, for War, and for India, ; the First Lord of the Treasury, the President of the Poor Law Board; and the Chancellor of the Exchequer. The latter functionary must necessarily be a member of the committee, because almost every minute, either directly or indirectly, affects the question of money. It is a matter of propriety, also, to have the Home Office represented. Otherwise, there is no absolute necessity for any other office in the ministry to be represented on this committee.[y]

Its functions.

It is very desirable that there should be a sort of standing committee of the Cabinet for educational purposes.[z] Nevertheless, since the existing organisation of the department has been established, the committee exercise no administrative functions, and take no part in the current business of the office. They are summoned, from time to time, at the discretion of the Lord President, and in his name, to meet in the Council chamber, for the purpose of deliberating upon proposed minutes, or upon questions of importance, involving considerations of general policy, submitted to them by that functionary.[a] The members summoned do not all invariably attend. The quorum of the committee is three; but supposing that number not to be present on a given day, the Lord President and Vice-President would undertake of themselves to decide the business upon which the committee

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[y] Rep. Educ. Com. 1865, Evid. of Earl Granville, 2327–2330, 2964; of Earl Russell, 3052.

[z] *Ibid.* Mr. Lowe's Evid. 810.

[a] *Ibid.* Evid. 117, 130.

was summoned;[b] and might, in point of fact, pass a minute on their sole authority.[c]

A consultative body.

The committee, however, is an active working body; but only for quasi-legislative or consultative purposes. They never originate any measures, but merely advise and concur in the 'bye-legislation,' which, under the name of Minutes of Council, emanates from their authority.[d] Technically, the Committee of Council on Education are the depositaries of the whole power; in practice, they delegate all the executive and administrative functions to the Lord President; and notwithstanding the responsibility which, in theory, attaches to them, the practice is now established that the Lord President is responsible to Parliament for everything connected with the department.[e] Even were the other members of the commitee to 'outvote' the President and Vice-President, a case which never occurred, they could not compel those responsible ministers to accept the decision of the majority.[f] But, like the Cabinet itself, the opinions of this committee are usually declared in an informal way; and there is no record kept of their proceedings, unless they pass minutes.[g] In fact, it is only by means of the 'Court Circular' that it could be ascertained how often the committee met, and who attended on any particular occasion.[h] The secretary of the department is not obliged to be present at meetings of the committee; he only attends when specially required.[i]

While it is entirely in the discretion of the Lord President whether he will submit the consideration of any particular question of policy to the committee or not, it is nevertheless his duty to submit the minutes to them;

[b] Rep. Educ. Com. 1865. Evid. 61–64, 361–365, 1318, 1347.
[c] *Ibid.* 133.
[d] *Ibid.* 609–614.
[e] *Ibid.* 763, 776.
[f] *Ibid.* 118–122.—It would be, no doubt, perfectly competent to a majority of the committee to overrule a decision of the Lord President; but he would have a perfect right to appeal to the Cabinet to decide on the question. Earl Russell, *ibid.* 3064, 3065. See also Earl Granville's Evid. 1903, &c., 2324, 2400.
[g] *Ibid.* 151, 223.
[h] *Ibid.* 418.
[i] *Ibid.* 69, 70.

for so far as extends to the making of minutes, the committee is designed to act as a check upon the Lord President.[j] Mr. Lowe even went the length of contending that the responsibility for making minutes rested on the committee; and that if the committee differed in opinion with the President, in regard to a minute, their opinion would certainly prevail. Admitting that it has never come to direct opposition, he asserted that an expression of opinion on the part of the committee has always induced the Lord President to modify his opinion; and that nothing has ever been done against the opinion of the committee.[k] The then President of the Council (Earl Granville) whilst vindicating the constitutional responsibility and supremacy attaching to that office, was similarly impressed with the value of the Education Committee as a consultative body. He declared that he would not undertake the responsibility of passing measures of importance without the sanction and agreement of his colleagues in the Cabinet; and this consent he considered is best obtained by means of a committee of the Cabinet specially conversant with educational questions.[l] Personally, he had found the Education Committee very useful, and its members always willing to attend. By consultation with it, minutes have been rejected, postponed, or altered, from time to time. Whilst his predecessor in office (Lord Salisbury) had found it difficult to get the committee together, he had never done so.[m] At the same time, he declared that he 'never, by any chance, consulted the committee upon any question of administration.'[n] And that he did not consider that any responsibility attached to them, except as members of the existing Cabinet.[o] To a similar effect, Earl Russell expressed his opinion, that those who concurred in a minute were, to a certain degree, responsible for its

[j] Rep. Educ. Com. 1865. Mr. Lowe's Evid. 615, 663.
[k] *Ibid.* 620, 764–768, 777, 806.
[l] *Ibid.* 1887, 2325.
[m] *Ibid.* 1886–1888, 2401.
[n] *Ibid.* 1891.
[o] *Ibid.* 1902, 2433. See Mr. Adderley's Evid. to the same effect, 834.

general contents, but that it would be very difficult to define what their responsibility amounted to.[p]

Position and duties of the President.

The Lord President of the Council is the controlling and responsible officer in this department; and his authority, in all matters of administration is supreme and final, whenever he may choose to exercise it.[q]

It has sometimes been questioned whether it is desirable that the responsible head of this office should be one who occupies such an important post as that of President of the Privy Council; but from the evidence of the leading statesmen who explained their views on this subject before the Committee on Education in 1865, it is clear that the arrangement is attended with many advantages.

In the first place, the Lord President is the connecting link between the department and the Cabinet, of which he is invariably a member; whilst the Vice-President has no seat in the Cabinet.[r] No department which is not presided over by a Cabinet minister can make a reference to the Cabinet on any matter, except by drawing up a memorandum to be presented by the Home Secretary; a proceeding which would carry little weight, compared to a direct appeal from a Cabinet minister to his colleagues.[s] Whilst therefore the presidency of the Education Department does not correspond, in dignity and importance, to that of other Cabinet officers, and whilst the work is not of a class to entitle the chief to be a Cabinet minister, there is nevertheless a great advantage in his being in the Cabinet.[t]

Again, it is necessary that there should be some responsible officer to represent the department in the House of Lords. This is peculiarly advisable on account of the presence of the bishops in that House; inasmuch as it is estimated that four-fifths of the money voted by Parliament for the encouragement of education is expended on

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[p] Rep. Educ. Com. 1865. 2890-2892, 3047.
[q] *Ibid.* 23, 113, 620, 1906.
[r] *Ibid.* 142.
[s] *Ibid.* 667, 668.
[t] *Ibid.* 664. And see 839, &c.

schools in connection with the Church of England, in which the bishops naturally take a deep interest. Besides which, so many educational questions are connected with religion and with the interests of the Church that it is important to be able to communicate freely with the bishops thereupon.[u] The Lord President of the Council is usually not only a member of the House of Lords, but the leader of the government in that assembly.

The duties which devolve upon the Lord President of the Council, in connection with the Education Office, though not sufficiently onerous for a minister of his high position, were it not that he has other duties to perform on behalf of the Privy Council, are by no means inconsiderable. They usually take up a comparatively small portion of his time; but when work comes, it is both anxious and important. The Education Office is one which is exceedingly difficult and delicate to administer, on account of its touching people's pockets, and also on account of its relations to the Church.[v]

Over and above the direction of the general policy of the office, the Lord President takes entirely into his own hands the patronage of the department, and the appointment and dismissal of school inspectors. He is also consulted by the Vice-President in regard to any proposed alteration in the ordinary routine of administration. The consequence is that there is no one set of questions in the office with which the Lord President is not familiar. From time to time, in some shape or other, everything is brought before him, and he is quite competent to answer questions in the House of Lords without consulting the Vice-President, or anyone else, unless it be on a mere point of detail.[w]

Of the Vice-president.

The Vice-President of the Education Committee is the officer by whom the current business of the department

[u] Rep. Educ. Com. 1865. 141. (And see Hans. Deb. vol. clxxvii. p. 875.)

[v] *Ibid.* 634, 664, 665, 755. And see 839–845.

[w] *Ibid.* 869, 907–910.

is transacted. He is made a Privy Councillor in order that he may be a member of the Education Committee, all the meetings of which he invariably attends. He is in constant communication with the President. Whilst it is a matter of discretion with the Vice-President as to what he may think fit to bring before his chief—and, in point of fact, nine-tenths of the business of the department is transacted without reference to the President—there is, nevertheless, a general understanding that no new rule of practice should be established, and no alterations made in existing rules, without the President's sanction.[x]

The authorising of building grants, and the general distribution of the educational grant, as at present settled by Parliament, is exclusively managed by the Vice-President. But he would consult his chief upon any intended alteration in the mode of distribution.[y]

According to Mr. Lowe, the position of the Vice-President is analogous to that of an under-secretary of state—with the single exception of his having a seat in the Education Committee; and his responsibility is limited to that of administering the department with honesty, to the best of his ability, and in obedience to his official superiors, the Lord President and the Committee of Council. In other words, he is simply responsible for his personal good conduct.[z] The ex-President, Lord Salisbury, and ex-Vice-President, Mr. Adderley, incline to agree with Mr. Lowe on this point, viewing the Lord President as being solely responsible to Parliament for the conduct of the business of the office.[a] On the other hand, the then Vice-President (Mr. Bruce) held that the President and Vice-President were jointly and severally responsible to Parliament for the department.[b] And the

[x] Rep. Com. on Education Inspectors' Reports, 1864, p. 55. Rep. Com. on Education, 1865. Evid. 23–49, 113, 220, 334, 624, 828, 1872–1878, 2308.

[y] *Ibid.* 221, 869, &c.

[z] *Ibid.* 621–624, 679, 689, 814, &c.

[a] *Ibid.* 948–952, 1316–1322. At the same time, Mr. Adderley thought that the discordant opinions on the subject proved the necessity for better defining the position of the Vice-President.

[b] *Ibid.* 827–834.

then President of the Council (Earl Granville), who had had twelve years' experience as head of this department, viewed these two opinions as, to a certain extent, reconcilable. He considered 'that the ultimate decision of all questions rests entirely with the Lord President; and that if faults are committed, either by himself or by any of his subordinates of any grade in the office, he is the person responsible to Parliament to the greatest extent.' Lord Granville illustrated his views by reference to the case of Mr. Lowe.

Case of Mr. Lowe.

In 1864, that gentleman resigned the office of Vice-President of the Education Committee on account of a vote of censure which was passed upon the department by the House of Commons. His lordship conceived that Mr. Lowe's resignation arose from a misapprehension of the facts. He himself did not resign, but had no doubt that he should have done so. In fact, he had waited on Lord Palmerston, and tendered his resignation. But the Premier begged him to withdraw it, which he agreed to do, on condition that the government would invite the House of Commons to re-consider the subject, when he would await their final decision. He considered that Mr. Lowe's resignation was unnecessary; but he justified it on the ground of personal feeling as to his own honour. Technically, the Lord President should have resigned, and the Vice-President might have retained his office.

Responsibility to Parliament.

Upon the general question of responsibility, however, the fact of representing a department in Parliament makes a great difference in the position of a subordinate officer, be he a vice-president or an under-secretary. It may not make any technical difference, but the subordinate minister is clearly responsible to the House of Commons as the representative of the department to which he belongs, although a much greater responsibility attaches to the departmental chief, whose orders he is obliged to carry out, and whose authority is supreme.[aa] A vice-president, moreover, is of a higher grade than an under-secretary, and his personal responsibility is proportionably greater. An under-secretary, even, who represents his

[aa] Rep. Com. on Education, Evid. of Mr. Lowe's case, see *ante*, vol. i. 1896, 1897. For further particulars p. 267.

department in the House of Commons, and who takes a prominent and able part in the conduct of public affairs, is naturally supposed to have something to do with the government of the office, and cannot free himself from a certain modified responsibility in reference to his own department.[bb]

Functions of this office.

The functions of the Education Department, it has been already intimated, are of a very subordinate description to those which devolve upon the principal offices of government. It does not administer important affairs of state, but merely pays out public money on the performance of certain conditions by the recipients of the same. In other words, the whole business of the office consists in drawing up such sets of rules as the House of Commons will grant money upon.[c]

Preparation of minutes.

The most important of these rules are those which are termed minutes of the Committee of Council on Education. Minutes of council differ from orders in council. The latter are presumed to emanate from the whole body of the Privy Council, and are issued by order of the sovereign. The former are departmental regulations, which are binding upon all concerned when they have received the tacit approval of Parliament, by remaining on the table of both Houses for one calendar month.[d]

There is no uniform practice in the preparation of minutes. They are always drafted by the Secretary under instructions received from the Lord President, or the Vice-President, who would act together in such a matter. They are then usually printed and circulated, confidentially, among the members of the committee, for their written opinions. When finally settled, a meeting of the committee is convened, at which the minute is passed. Sometimes the Lord President settles the minute in the

[bb] Rep. Com. on Education, Evid. 1901, 1906–1909, 2342, 2410, &c. Earl Russell expressed his general concurrence in these views of Earl Granville, 2901, &c.

[c] *Ibid.* 634, &c., 753. See Earl Russell's evidence on this point, *Ibid.* 2919, 2968, &c.

[d] *Ibid.* 229, 2955, 3032. See *ante*, vol. i. pp. 291–296.

office, and after conferring with the Vice-President and his subordinates on the subject, takes it with him to the Cabinet, in order to consult his colleagues thereupon, or as a convenient mode of consulting the other members of the Education Committee. But whatever may be the intermediate and provisional steps, the final and decisive proceeding is to obtain official sanction to the minute, by calling a meeting of the Committee of Council. If the committee neglect to attend when duly summoned, a minute might be passed by the President and Vice-President alone; but of late years there has been no difficulty in getting the committee together when required. After a minute has been passed, it must be laid upon the table of both Houses for one month before it is acted upon.[e]

Supplementary rules are in the nature of instructions and directions to the school inspectors, in explanation of the Revised Code, or other minutes of council, their scope and purport, and the mode in which they should be administered. These rules represent the generalisation of decisions which have arisen in the daily practice of the Education Office. They are framed by the Secretary, with the assistance and authority of the Vice-President.[f] Supplementary rules.

The Committee of Council on Education, out of the funds placed by Parliament at their disposal, make grants towards the building, enlarging, and furnishing of school-houses, elementary and normal; they aid the purchase of books, maps, diagrams, and scientific apparatus; they give stipends to pupil-teachers, and make allowances to certified industrial and ragged schools. They also augment the incomes of many of the teachers, schoolmasters and mistresses, throughout the kingdom.[g] Appropriations.

It is furthermore the duty of the Education Department to consider of grants in aid of schools, and to keep

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[e] Rep. Com. on Education, Evid. 71, &c., 133, 229, 346, 375, 791.

[f] *Ibid.* 86, &c., 184, 250.

[g] See Parkinson's Under Government, p. 76. Cox's Commonwealth, 398–401. And the Report of the Education Commission in 1861, Com. Papers, 1861, vol. xxi.

Promotion of education.

a strict watch and account over the expenditure incurred in behalf of the same, by a regular system of school inspection; to conduct public examinations from time to time, both of teachers and pupils; to establish training colleges for teachers, and generally to foster and promote the diffusion of education, pursuant to the rules laid down in the minutes of the Committee of Council for the establishment of a sound system of public education in Great Britain and Ireland. An annual report of progress is presented to the Queen in Council, signed by the President and Vice-President.[h] Appended thereto are separate reports from the government inspectors of the various elementary schools, training colleges, Admiralty, and ragged schools[i] throughout the kingdom, which come under their supervision.

Proposed departmental reforms.

The constitution of the Education Committee has recently excited much dissatisfaction, both in and out of Parliament, and it is probable that ere long it will be reorganised, and the field of its operations extended to schools at present unassisted by the state.

On February 28, 1865, on motion of Sir John Pakington, a select committee was appointed by the House of Commons to enquire into the constitution of the department, with a view to its re-organisation, and better adaptation for the important functions it has now to perform. This committee sat until June 23, when, being unable to complete their labours, they reported the evidence already taken to the House, with a recommendation that the enquiry should be resumed in the next session.[j] Accordingly, on February 13, 1866, the committee was re-appointed, again under the presidency of Sir

[h] See Commons Papers, 1856, vol. xiv. pp. 574–576.

[i] In 1865, the management of the education of the poor, so far as it depends upon state grants, was transferred from the Privy Council to the Poor Law Board, who now supervise the district and workhouse schools in England and Ireland. (See *post*, p. 708. Civil Service Estimates, 1868–9, Class II. p. 43.) The industrial and reformatory schools, and the military schools, were also, for a time, placed under the direction and supervision of the Education Committee; but in practice it was found impossible to carry out this arrangement, and they are now administered, the former by the Home Office, and the latter by the War Office, being the departments specially interested therein. Hans. Deb. vol. cxc. p. 505.

[j] Commons Papers, 1865, vol. vi. p. 3.

John Pakington. They sat until July, when, having finished their investigations, and being engaged in deliberating upon a draft report presented to them by their chairman, a change of ministry occurred, and Sir John Pakington was called upon to assume office. Under these circumstances, the committee decided to refrain from making any recommendations to Parliament, upon the important and difficult questions which had engaged their attention, until the new administration had had time to consider them. They therefore resolved to lay the evidence alone upon the table of the House, leaving it for the House to determine whether they should be re-appointed next year, in order to prepare a report thereon.

Minister of education.

The committee was not re-appointed; but on December 2, 1867, Earl Russell submitted resolutions to the House of Lords, in favour of the extension of education and the improvement of the existing machinery for that purpose; also recommending the appointment of a minister of education, with a seat in the cabinet. But the propositions were regarded as untimely, and after a brief debate they were negatived, without a division.[k]

In the proceedings of the committee of 1866, there appears a copy of the draft report submitted by Sir John Pakington, and which it is probable, but for the change of ministry, would have been adopted by the committee.

Adverting to the conflicting opinions expressed by several gentlemen who had presided over the Education Office, concerning the utility of the Committee of Council as a permanent part of the department, it is stated in this draft report, as the conclusion of the committee, 'that the agency of the said committee, in the ordinary business of the Education Department, whether administrative or legislative, is anomalous and unnecessary; that it tends to diminish, on the part of the education minister, that sense of individual responsibility which is the best security for efficient discharge of official duties; and that in those rare cases in which the minister requires advice from his colleagues, it would be better that the whole cabinet should be consulted.' And in regard to the question whether, under the present regulations, there are one or two education ministers (a point upon which the statements of the official witnesses are at variance) the draft report recommends—1. That the Committee of Council on Education, being no longer adapted to the purpose for which it was formed, should cease to exist. 2. That there should be a minister of public instruction, with a seat in the cabinet, who should be entrusted with the care and superintendence of all matters relating to the national encouragement of science and art and popular education in every part of the country.[l]

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[k] Hans. Deb. vol. cxc. pp. 478–506. And see *ante*, p. 241.

[l] Report Com. on Education, 1866, pp. x. xvi.

From the testimony of the most experienced and competent witnesses before the Education Committee, in 1865 and 1866, it is evident that the system now administered by the Education Department is partial, incomplete, and too highly centralised. And also, that the Education Department, as at present constituted, is not well adapted for the administration of a reformed system, which shall penetrate and provide for the educational wants of every part of the country. To remedy these serious defects, it was proposed to declare in the draft report of 1866, that the duties of the proposed minister of public instruction should not merely be administrative, but also suggestive, that local organisation in connection with the central department should be resorted to; that power should be given to levy a rate in certain cases, in lieu of the principle of voluntary aid; and that resort should be had to a system of mixed religious education, as a substitute for the denominational system now in operation. But the committee were unanimously of opinion, that until they were aware of the view which might be taken upon these great questions of policy by the new administration, and had a clear prospect of arriving at conclusions which it might reasonably be expected would be adopted by the legislature, it would be undesirable to disturb and unsettle the minds of those who are actively engaged in the promotion of the existing system.[m]

Conscience clause.

Another educational question which has given rise to much controversy[n] has grown out of what is termed the Conscience clause. This is a regulation (not yet embodied in any formal minute) which was first framed by the Education Office about the year 1860, and which has since been made generally, though not invariably, applicable to grants on behalf of schools. It is as follows: 'The managers of the school shall be bound to make such orders as shall provide for admitting to the benefits of the school the children of parents not in communion with the Church of England, as by law established; but such orders shall be confined to the exemption of such children, if their parents desire it, from attendance at public worship, and from instruction in the doctrines or formularies of the said Church, and shall not otherwise interfere with the religious teaching of the scholars.'[o]

The practical effect of this clause is, to allow parents who do not

[m] Rep. Com. on Education, 1866, pp. xi. xii. xvi. xvii.

[n] See the voluminous evidence on the subject before the Education Committees. Commons Papers, 1865, vol. vi. Index, pp. 16-20. *Ibid.* 1866, vol. vii. Index, pp. 331-333.

[o] This is the form usually chosen; but there is another form to the same general effect, which has been in use for a number of years, in cases wherein the proportion of Dissenters attending the school seemed to make it necessary that some security should be taken to ensure a due regard to their religious convictions. Rep. Educ. Com. 1866. Evid. 3435-3439. And see Hans. Deb. vol. cxcii. p. 407.

wish their children to be taught any particular doctrine, to withdraw them from the schools at the time religious instruction is given. At first this clause was strenuously opposed by the clergy of the Established Church, who deprecated the withdrawal of any children from their own oversight and pastoral care, and who feared that even this concession to Dissenters would tend to destroy the denominational character of the schools, and lead to all religious teaching therein being done away with. But the objections to the operation of the clause are gradually subsiding, and the impression is gaining ground amongst all parties that it is fair and reasonable. The government are desirous that the clause should be so applied as to give protection and liberty to parents to remove their children from the influence of any religious teaching which they may deem objectionable; and, at the same time, to secure that denominational teaching in the schools shall not be interfered with. Thus interpreted, the principle of the conscience clause is now acted upon 'in almost every school.'[p] The draft report proposed by the chairman of the Commons' committee of 1866 recommended that it should be rigidly enforced in every instance, under penalty of the suspension of the annual grant to any school where it is not acknowledged.[q] This, however, as we shall presently explain, has not been agreed to by the government.

In conformity with the leading ideas in the draft report above mentioned, a Bill was presented to the House of Lords, on March 24, 1868, by the Duke of Marlborough, the Lord President of the Council in Mr. Disraeli's administration, to regulate the distribution of sums granted by Parliament for elementary education in England and Wales. This Bill was intended to effect some important reforms, and to initiate a new and more extended policy in regard to education. Instead of the Education Department being, as at present, merely administrative, and 'following in the wake of voluntary efforts,' it was proposed that Parliament should empower her Majesty to appoint a secretary of state, who should have the whole range of educational matters in the United Kingdom under his consideration and control. That besides administering the sums granted by Parliament for educational purposes, the secretary should also, on his own responsibility, investigate the various questions connected with national education, and submit to Parliament plans for the promotion thereof. Also, that such portions of the Revised Code as relate to the terms upon which the educational grant shall be administered, should be embodied in an Act of Parliament. That hereafter the condition requiring all schools aided

Secretary for Education.

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[p] Duke of Marlborough (Lord President of the Council). Hans. Deb. vol. cxc. pp. 500, 501. And see *Ibid.* vol. cxcii. p. 1158.

[q] Report of 1866, p. xvi.

Con-science clause.

by the state to be in connection with some religious denomination, should be dispensed with, and payments be made for results obtained in regard to secular teaching alone. Nevertheless, that denominational schools might continue to receive state aid, provided that, when required by the circumstances of the particular case, management clauses (otherwise called 'conscience clauses') for the protection of the rights of children of other denominations attending the school, are duly inserted in their trust-deeds. To avoid misapprehension, it was proposed to insert, in the schedules of this Bill, the management clauses of the Church of England, the Wesleyan, the Congregational, the Roman Catholic, the Jewish, and other denominational schools, as at present used by those religious bodies. It was also intended that the Bill should state under what circumstances the government would require the acceptance of a 'conscience clause' by the trustees of a Church of England school, and the precise terms wherein that clause should be hereafter framed.

This would have offered a fair and reasonable settlement of questions that have hitherto proved difficult and embarrassing. If a purely secular school presents its scholars for examination, the state would not refuse to examine and pay for the results of their teaching. On the other hand, by a change in the terms of the 'conscience clause,' it could be made generally acceptable both to Churchmen and to Dissenters: that is to say, by the omission of the word 'doctrine,' which occurs only in the trust-deeds of Church schools. This would have afforded equal security to all against the teaching of the peculiar tenets of any Church or sect to children of another denomination, while it would secure religious instruction to all whose parents might desire that they should receive it.[r]

But owing to the difficulties encountered by ministers in the House of Commons during this session, the government announced their intention of not proceeding with their Bill. It was accordingly withdrawn on May 18. In regard to the conscience clause, it was determined that there should be no deviation from the present practice, or from the principles at present acted upon by the Education Department, until the direct sanction of the legislature had been obtained.[s]

Contemporaneously with the introduction of the government Bill, a larger and more comprehensive measure, to provide elementary education in England and Wales, was brought in by Mr. Bruce, the Vice-President of the Education Committee in Earl Russell's administration. After undergoing some discussion in the House, this Bill was also withdrawn, on June 24, 1868. But it will

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[r] Duke of Marlborough's speech, Hans. Deb. vol. cxci. pp. 105-129.

[s] *Ibid.* vol. cxcii. pp. 405-411, 1158. And see 31 & 32 Vict. c. 118, sec. 12,

probably be re-introduced, and become in substance the law of the land, at an early period.[t]

Officials.

The establishment at the head office, in London, consists of a permanent secretary (with a salary of 1,500*l.* per annum), two assistant secretaries, ten examiners, fifty-four clerks, seventy-eight inspectors, and twenty-three inspectors' assistants, together with an advising counsel, an architect, an accountant, and a private secretary to the Vice-President.[u] All the patronage of the department, whether it be direct, or by nomination for competition under the civil service competitive system, is in the hands of the Lord President.[v]

Correspondence.

The correspondence of the department is conducted by the secretary, but always in the name of 'My Lords' the members of the Committee of Council on Education. In fact, every letter that leaves the office is written in the name of 'My Lords,' even though it may be but the decision of an assistant secretary, or of an examiner, upon a minor point of practice, and may not even have been seen by the secretary. In this, as in other public departments, for the transaction of ordinary business, the permanent officer is trusted with the name of the department as he might be with a common seal. He uses it on his own responsibility, and if he misuses it, the appeal lies to his chiefs. In the great mass of daily business, it is impossible to submit every letter to the official head: and where a case is clear, and according to precedent, the secretary would be justified in deciding it himself, in the name of 'My Lords.'[w] Any case which fairly admitted of doubt, or wherein the writer had made a special request that the responsible minister should be consulted, he would carry to his superior officers; upon whom devolves the sole responsibility to Parliament for every act

[t] Hans. Deb. vol. cxcii. p. 1983. Bill No. 64. For an analysis and comparison of both Bills, see Dublin Review, July 1868, p. 174.

[u] Civil Service Estimates, 1868–9, Class IV. p. 12.

[v] Report, Committee on Education, 1865. Evid. 217, 218, 631.

[w] *Ibid.* 145–147, 281–291, 327–330.

of administration.[x] Letters on minor points are drafted under the directions of the examiners, and are usually signed by an assistant secretary.[y]

The Science and Art Department for the United Kingdom.

Department of Science and Art.

By an order in council, issued in February, 1856, the Department of Science and Art (previously under the direction of the Board of Trade) was transferred to the superintendence of the Education Committee of the Privy Council.

The Department of Science and Art owes its origin to suggestions contained in the second report of the Commissioners for the Exhibition of 1851, which being favourably entertained by the government, the cooperation of Parliament was invited, by the speech from the throne at the opening of the session of 1852-3, in a 'comprehensive scheme for the advancement of the Fine Arts and of Practical Science.' In furtherance of this idea, the Lords of the Treasury, in March, 1853, authorised the establishment of a new department, under the direction of the Board of Trade, to be called the Department of Practical Science and Art.

Already, in 1837, a government school for the study of Ornamental Art and Design, as applied to manufactures, had been established, pursuant to a report of a committee of the House of Commons in 1836, on Arts and Manufactures, which recommended that 'specimens from the era of the revival of the arts, everything in short which exhibits in combination the efforts of the artist and workman,' should be collected together for the use of art-students.[z] This recommendation was afterwards carried into effect by the South Kensington Museum; whilst in

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[x] Report, Com. on Education, 1865. Evid. 290-292, 507, 869-873. The Secretary invariably communicates with the Vice-President upon official business; though he has free access to the Lord President when necessary. *Ibid.* 208-214.

[y] *Ibid.* 330.

[z] Commons Papers, 1836, vol. ix. p. 1.

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1838, about 1,500*l.* was expended in the purchase of objects of ornamental art for the benefit of the School of Design.[a] From this school several branch institutions emanated, in various parts of Great Britain. These were conducted with varying success. Two enquiries were subsequently made into the progress of the Government School of Design, one in 1847—by the Board of Trade,[b] the other in 1849, by a committee of the House of Commons.[c] The result was the organisation, in 1852, of a department of practical art, which should endeavour, by means of elementary art schools and museums, to foster and encourage a taste for art amongst all classes of the community throughout the kingdom, and, by establishing central institutions in London and elsewhere, to train teachers, and supply higher instruction in special branches thereof. A museum of practical geology and mineralogy was also founded by government, and a school for instruction in mining, metallurgy, and various manufactures. The Department of Practical Art, the Jermyn Street Museum of Practical Geology, and the Royal School of Mines were all merged into and placed under the control of the Science and Art Department of the Board of Trade in the year 1853.

The Department of Science and Art is furthermore entrusted with the prosecution of the Geological Survey of the United Kingdom, and the collection and publication of mining records.[d] It has charge of the National Portrait Exhibition, which is one of great historical interest, and owes its origin to certain suggestions made by the Earl of Derby, in 1865.[e]

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[a] Commons Papers, 1860, vol. xvi. pp. 529, 550.

[b] *Ibid.* 1847, vol. lxii. pp. 473, 615.

[c] *Ibid.* 1849, vol. xviii. p. 1.

[d] In regard to the progress of the Geological Survey, and the present condition of the Jermyn Street Museum and School of Mines, see Civil Service Estimates, 1868–9, Class IV. pp. 30, 34.

[e] *Ibid.* 1867–8, Class IV. p. 17. This collection must not be confounded with the National Portrait Gallery, which is under the control of fifteen trustees, who were first appointed in 1857, and who report annually to the Lords of the Treasury (see Commons Papers, 1867, No. 274). In like manner the National Gallery of Paintings is controlled by trustees,

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Navigation schools for the instruction of officers of the mercantile marine, and youths intended for a seafaring life, have been instituted in different parts of the United Kingdom, and placed under the superintendence of the Science and Art Department.[f] In 1864, the government decided upon founding a school of naval architecture, for the scientific education of shipbuilders; which is also under the direction of this department. Though primarily intended for the instruction of government pupils, to be employed in the Admiralty dockyards, this school is also made available to the public generally, with a view to its becoming a great national institution, for the service both of the royal navy and of the mercantile marine.[g] The school is working well.[h] During Sir R. Peel's administration (1841-46), a similar institution was established at Portsmouth, to which selected pupils from the other dockyards were sent for instruction; and it proved very serviceable. When Sir James Graham became First Lord of the Admiralty, in 1853, this school was abolished, a step which operated very injuriously to the maritime interests of the country, so that its re-establishment produced general satisfaction.[i]

The attention of the Science and Art Department, as well as of the public generally, has been lately directed to the necessity for making more liberal provision for the encouragement of technical education, and the scientific instruction of the artisan classes.[j] The following questions

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who are appointed by the First Lord of the Treasury, and who report annually to the Treasury. *Ibid.* No. 176. See a debate in the House of Commons on August 1, 1867, on the National Art Collections, and their future administration.

[f] See Captain Ryder's Reports on Navigation Schools, Commons Papers, 1859, vol. xxi. pt. 2. p. 583; *ibid.* 1860, vol. xxiv. p. 114; and, in subsequent years, Captain Donnelly's Reports on Science and Navigation Schools; appended to the Annual Reports of the Science and Art Department of the Com. of Coun. on Education.

[g] *Ibid.* 1864, vol. xxxvii. p. 611. Hans. Deb. vol. clxxiii. pp. 1112, 1308; vol. clxxvi. p. 498. Civil Service Estimates, 1868-9, Class IV. p. 24.

[h] Hans. Deb. vol. clxxvii. p. 1153; vol. clxxxiv. p. 1572; vol. clxxxvii. p. 1840.

[i] *Ibid.* vol. clxxxiv. p. 1572.

[j] The Schools Inquiry Commission made a special report in 1867

were addressed, in November 1867, to Chambers of Commerce throughout the kingdom :— Technical instruction.

1. What trades are now being injured by the want of a technical education?
2. How, and in what particulars, are they injured?
3. How do other countries, from their greater attention to technical instruction, absorb our trade? Give instances, and, if possible, statistics.
4. What plan of technical education would remedy the evil?

Copies of answers received to these queries—together with reports upon technical, industrial, and professional instruction in various foreign countries—were laid before Parliament.[k] And on March 24, 1868, the House of Commons appointed a select committee to enquire into the provisions for giving instruction in theoretical and applied science to the industrial classes. The debate on this motion proved the necessity for additional exertions to secure the ancient superiority of British workmen over their continental competitors, while it also showed that the government had not been supine in the matter.[l] The committee reported, on July 15, a series of valuable suggestions for the promotion of scientific instruction in England, together with much evidence taken by them on that subject.[m]

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concerning information received by them that the Industrial Exhibition of Paris in 1867 furnished evidence of a decline in the superiority of certain branches of English manufacture over those of other nations, which was attributed, in part, to the want of technical education in England. They were induced to make this report as the prosecution of any enquiry into this subject appeared to be beyond their powers. Commons Papers, 1867, vol. xxvi. p. 261. See also Mr. Scott Russell's paper in Macmillan's Magazine, April, 1868. And copy of minutes on the munificent gift of 100,000*l.*, by Mr. Whitworth, to found 30 scholarships, of the annual value of 100*l.* each, for the further instruction of young men in mechanical science. Com. Papers, 1867–8, No. 194, I.

[k] See Commons Papers, 1867–8, Nos. 13, 33, 168. And the translation, with notes, of the Report of the Commission on Technical Instruction appointed by the French government in 1863. To this is appended a summary of the aid given by the British government to technical education, a list of the science and art schools in the United Kingdom to January 1, 1868, &c.

[l] Hans. Deb. vol. cxci. p. 160.

[m] Commons Papers, 1867–8, No. 432.

Science and Art Department.

The government have also resolved to enlarge the grants for secular instruction (beyond reading, writing, and arithmetic) in elementary schools; and, in order to assist artisans who may show an aptitude for scientific instruction, have created scholarships or exhibitions for the encouragement of science instruction, and for the support of students of the industrial classes while continuing their education. These are intended to supplement existing action on the part of the Science and Art Department, and by promoting secular instruction in elementary schools, to form a connecting link between them and the science and art schools and classes."

South Kensington Museum.

The Department of Science and Art is charged with the administration of the South Kensington Museum, an institution which—like the department itself—may be said to have arisen from the Great Exhibition of 1851; inasmuch as Parliament voted 5,000*l.* for the purchase of articles out of that Exhibition, which were afterwards deposited in the Museum at South Kensington.

This museum, however, was not formally opened as a separate institution until 1857, when it began to embody, on a larger scale than had hitherto been attempted, the suggestions and recommendations of successive parliamentary committees since 1836 for the improvement of industrial art in this country. The collections in this museum now consist of—1. Objects of Ornamental Art, as applied to Manufactures, with an Art Library; 2. British Pictures, Sculpture, and Engravings; 3. Architectural Examples; 4. Appliances for Scholastic Education; 5. Materials for Building and Construction; 6. Substances used for Food; 7. Animal Products; 8. Models of Patented Inventions; and 9. Reproductions by means of Photography and Casting.[o] On three days in the week the museum is freely open to the public, and on

[n] Copy of Minute, &c., of the Education Committee on Scientific Instruction, Commons Papers, 1867-8, No. 193. And see Hans. Deb. vol. cxci. p. 180.

[o] Commons Papers, 1860, vol. xvi. pp. 529, 551.

other three days to students; the general public may also attend on these days, on payment of a small entrance fee.[p]

It is an important branch of the system of Art Education, that the South Kensington Museum is supported by government, and is made use of as a central repository for choice examples of foreign and domestic art. It is also entrusted with the distribution of specimens of art (as gifts) to provincial museums and schools of art; and with the circulation, by way of loan, of similar articles for local exhibitions, museums, and schools of art throughout the kingdom; also of books from the Art Library to local art schools. A travelling collection of articles from each division of the Central Museum has been organised, which is sent in rotation to local schools of art, upon certain conditions, a practice which has proved most serviceable to art students who frequent such schools.[q]

The kindred institution of the new College of Science in Dublin, which was founded in 1867, as a strictly instructional institution, in place of the old Museum of Irish Industry, which has ceased to exist, its exhibitional functions having been merged into the Royal Dublin Society for the promotion of arts, manufactures, &c.,[r] together with the Dublin Zoological Society, are also connected with, and enriched by contributions from, the Department of Science and Art. Similar museums of science and industrial art, and of natural history, have

[p] Thom. Official Directory of United Kingdom, 1868, p. 177. The annual average of visitors to the Museum from 1857 to 1867 (excluding 1862, the year of the Exhibition) has been 624,714. Civil Service Estimates, 1868-9, Class IV. p. 29. New and magnificent buildings are in course of erection for the accommodation of the Museum. *Ibid.*

[q] Commons Papers, 1860, vol. xvi. pp. 711, 739. Rep. Sel. Com. on Paris Exhibition, Commons' Papers, 1867, vol. x. pp. 614, 645, 658. A catalogue of the printed works of all countries relating to the fine arts, from the invention of printing up to the year 1865, is in course of preparation, and is being printed weekly in *Notes and Queries*. The first scheme for publishing this universal art catalogue was objected to by the House of Commons, but grants have been since obtained for the prosecution of the work. Hans. Deb. vol. clxxxvii. p. 391; *ibid.* vol. cxc. p. 1218; vol. cxcii. pp. 1165-1172.

[r] Papers relating to the College of Science (Dublin), &c. Commons Papers, 1867, vol. lv. p. 777.

Science and Art Department.

been established in Scotland in connection with this department.[s]

The South Kensington Museum is under the control of a General Superintendent, who is at present (1869) also the Secretary of the Science and Art Department. And there are three Museum Superintendents, 'one for works and lighting, another for the arrangement of objects of science and art, and the third for custody, police, and general duties,'[t] besides three keepers, and ten assistant keepers.[u]

It is customary for Parliament to vote a sum of 10,000*l.* annually, to be appropriated to the purchase of works of art, to be deposited in this Museum. No purchase is made from this fund without the approval of the presiding officers of the Science and Art Department, and they are advised in such matters by the Art referees.[v]

A minute of the Education Committee, dated March 17, 1863, created two permanent Art referees, of the Kensington Museum—one to be 'responsible for advising the Board in respect of the purchase of all classes of objects of art (whether ornamental or industrial, ancient or modern), except modern (dating from 1750) pictures, sculpture, and engravings,' the other, to advise in regard to the aforesaid exceptions. The first referee made a point of visiting the Continent every year in search of works of art to be added to the Museum. It was also his duty to procure casts or other reproductions of works of art in museums and public buildings both at home and abroad, which should either remain at the Kensington Museum, or be circulated amongst the affiliated museums, or loaned to local exhibitions, in various parts of the country.[w] But in 1868, government, upon the advice of

[s] Civil Service Estimates, 1868-9, Class IV. pp. 31-33. Rep. Sel. Com. Paris Exhibition, 1867, pp. 16, 22, 24. And see Report of Committee to enquire into the constitution, working, and success of the Government Schools of Art, and into the system under which the parliamentary grants for promoting national education in art are distributed and administered. Commons Papers, 1864, vol. xii. p. 189.

[t] Hans. Deb. vol. clxxxvii. p. 936. Rep. Com. Paris Exhib. p. 10.

[u] Civil Serv. Est. 1868-9, IV. p. 28.

[v] Hans. Deb. vol. clxxxvii. p. 693. Rep. Com. Paris Exhib. pp. 24, 42.

[w] Rep. Com. Paris Exhib. 1867, p. 24.

a departmental committee of enquiry, abolished these offices, and in lieu thereof consulted gentlemen skilled in different branches of science and art, as to intended purchases, paying them according to a set scale of fees.[a]

The South Kensington Museum is rapidly growing in public estimation, and the distribution therefrom of special collections, illustrating particular branches of science and art, to local museums in England, Scotland, and Ireland, is much and increasingly valued throughout the country. It is the means of affording recreation and instruction to the whole nation, and especially to the poorer classes, and has tended greatly to improve the taste and skill of mechanics and manufacturers. This remark applies with equal force to the admirable collection of art manufacture and implements of education at the Central Museum itself, which has attracted great attention abroad, and led to the formation of similar industrial museums in other lands. All these results are attributable, for the most part, to the International Exhibitions which sprang into existence in 1851.[b]

Museums.

The Board for the control and management of the Science and Art Department, and its affiliated schools, &c., is composed of the Lord President and the Vice-President of the Committee of Council on Education, the controlling power, in this as in other matters, being with the Lord President. None of the other members of the Education Committee are consulted on the business of this department. The Board usually assemble about once a week, generally at South Kensington, for the transaction of business.[c] To

Control of Science and Art Department.

[a] Hans. Deb. vol. cxcii. pp. 1168, 1171, 1607.

[b] Rep. Com. Paris Exhib. 1867, pp. 34, 38-41. Hans. Deb. vol. clxxxix. p. 1232. The Select Committee on Schools of Art, 1864, recommended 'that the collection of works of decorative art at South Kensington be made more generally useful than at present throughout the country, especially in connection with local museums.' Accordingly, the annual grant for the purchase, loan, and distribution of objects to schools of art, or for local exhibition, has since been largely increased. Civil Service Estimates, 1868-9, Class IV. p. 26. See Hans. Deb. vol. cxcii. p. 1161.

[c] Rep. Sel. Com. on Education, 1865. Evid. 822, 1329, 2308, 2461, &c.

Science and Art Department.

advise and assist this Board, there are, in addition to the secretary and assistant secretary, other permanent officers. First, a general inspector for art, who is presumed to be always present at the Board to answer questions, and to advise upon reports in regard to purchases, &c. He also superintends the various schools of art throughout the country, and conducts examinations thereat.[d] In 1851, there were but seventeen art schools in the provinces, and one central school. There are now (1868) ninety-eight art schools; seventy-two night schools, first established in 1866, for the elementary instruction of workmen, after hours; and 588 schools for the poor, in connection with this department. There is also an inspector-general for science, in connection with the royal school of Naval Architecture, who superintends 302 schools for instruction in science generally, including mathematical, mechanical, and physical science. All these schools are examined yearly, and receive government aid in proportion to the number of pupils under instruction.[e]

Annual report.

An annual report is submitted to Parliament by the President and Vice-President of the Committee of Council on Education, exclusively concerning the proceedings of the Science and Art Department within the year, in relation (1) to the aid given to the industrial classes in obtaining instruction in the branches of science and art which have a direct bearing on their occupations; (2) to the administration of the South Kensington Museum; and (3) to the condition of the institutions for the promotion of science and art which are subject to the superintendence of the department. Appended to this report are special reports from the directors, &c., of the particular institutions or scientific bodies under the control of the department.[f]

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[d] Rep. Com. Paris Exhibition, 1867, pp. 5, 9.

[e] *Ibid.* pp. 3, 16. Civil Service Estimates, 1868-9, Class IV. pp. 24-27. Hans. Deb. vol. cxcii. p. 1162. For a comparison of the provision made by the State for technical education in Great Britain and in other countries, see *ibid.* vol. clxxxix. p. 359.

[f] Commons-Papers, 1865, vol. xvi. p. 305.

There is a separate vote on behalf of Public Education in Ireland, which is administered by the Irish Commissioners of National Education. It amounted for the year ending March 31, 1869, to the sum of 360,195*l.*[g]

The Science and Art Department, however, is for the whole United Kingdom, and takes charge, at present, of the grants on behalf of scientific institutions in Ireland.[h] But it is in contemplation to constitute a separate Department of Science and Art for Ireland, similar to that above described, and to amalgamate as far as possible all existing Irish institutions, now in the receipt of state grants for the encouragement of science or art. With this view a royal commission was appointed in 1868, to report on the best means of carrying out this object.

The Charity Commissioners.

Charity Board.

In the year 1853, her Majesty was authorised by Act of Parliament,[i] to appoint four commissioners (with a secretary and two inspectors) to act as 'The Charity Commissioners for England and Wales,' with power to enquire into all charities therein, their nature and objects, administration, management, and results, and the value, condition, management, and application of the estates, funds, and income of the same. In lieu of, or in conjunction with, the courts of equity—which in general take cognizance of all charitable uses, or public trusts—this Board is empowered to call trustees to account for the funds committed to their charge, to appoint new trustees, rescind improvident alienations, consider and adopt schemes for giving effect to the donor's object, and afford

[g] Civil Service Estimates, 1868-9, Class IV. No. 14. But practically the government has no control over this expenditure. The whole system of Irish education is at present in an unsatisfactory state, and will doubtless ere long be placed under a more responsible management. Hans. Deb. vol. cxci. p. 119. In 1868, a royal commission was appointed, to enquire into primary education in Ireland. Civil Serv. Est. 1868-9, Class VII. p. 8.

[h] *Ibid.* Class IV. pp. 31-33.

[i] Act 16 & 17 Vict. c. 137, amended and extended by 18 & 19 Vict. c. 124. 23 & 24 Vict. cc. 134, 136; 24 Vict. c. 9; 25 & 26 Vict. c. 112.

Charity Board.

every species of relief that may be required by such institutions.

The term 'charitable' is understood to include endowed schools (not being universities), and endowments for education, whether of rich or poor, which are subject to the operation of this law, and amenable to the jurisdiction either of the Court of Chancery or of the Charity Commission.[j]

All proposed alterations or improvements, as well as all sales or exchanges of charity lands, require the sanction of the commissioners; who are bound to institute enquiries and make reports to the Attorney-General, from time to time; and also to present to the crown an annual report of their proceedings, to be laid before Parliament. If any legislative action be required to give effect to a particular scheme approved of by the Charity Commission, a Bill for the purpose, after being sanctioned by the Vice-President of the Education Committee, should be submitted to the legislature by some member of the government.[k]

Under the provisions of the Charitable Trusts Act of 1860, the jurisdiction of the Board was considerably extended, and it now constitutes 'a distinct court of law, as a subordinate branch of the Court of Chancery.'[l] The operations of the Board have been attended with great

[j] See an account of the existing law of charities, as affecting endowed schools, with particulars as to the jurisdiction, powers, and proceedings of the Charity Commissioners, in the report of the Schools Inquiry Commission, presented to Parliament in 1868, vol. i. ch. iv. This chapter points out the inadequacy of the jurisdiction at present exercised on behalf of educational endowments, whether by visitors, or by the Court of Chancery and the Charity Commission, to effect the needful reforms. These commissioners further recommend an enlargement of the powers of the Charity Commission, and the appointment of additional members specially acquainted with all that concerns education, and of sufficient weight and reputation to have great influence with the country. They also advise that one of the new members should be 'a member of Parliament, who would be able to explain in his place the reasons for every scheme that was proposed, to show its relations to other schemes, and in the absence of a minister to answer any questions that might be asked' (p. 634).

[k] Hans. Deb. vol. cxci. p. 234.

[l] *Ibid.* vol. clxxxvii. pp. 772, 925.

public advantage, and are of increasing magnitude and importance.[m]

The Commissioners on Popular Education, in 1861, advised that the Charity Commission should be incorporated with the Education Committee of the Privy Council, and that the Privy Council be empowered through this Committee (on Education and Charities) to make ordinances for the improvement of educational charities, and for the conversion to educational purposes, in whole or in part, of any charities which as at present administered had become useless or objectionable. These ordinances to be laid before the trustees of the respective charities (who should be at liberty to appeal to another Committee of the Privy Council from any such decision), and afterwards to be submitted for the approval of Parliament.[n] This recommendation, however, has not been carried out; and it is doubtful whether Parliament would sanction the transference of the functions of a *quasi*-judicial Board to an executive and administrative department of state.[o] It is more likely that, pursuant to the suggestions of the Schools Inquiry Commission of 1868, the powers of the Charity Commission, as an administrative Board, and as a central authority, under the control of Parliament, will be extended and enlarged.

The commission is nevertheless under the general supervision and control of the Privy Council.[p]

The Board consists of a chief commissioner, and two assistant commissioners, who hold office during good behaviour, and who, with the secretary and the inspectors, are declared to be incapable of sitting in the House

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[m] See Fourteenth and Fifteenth Reports of the Charity Commissioners, for 1866 and 1867. Rep. Commission on Pop. Education, 1861, part v. Charitable Endowments. Hans. Deb. vol. cxci. pp. 1283–1290.

[n] Commons Papers, 1861, vol. xxi. part i. p. 540.

[o] Hans. Deb. vol. clxix. p. 184.

[p] See a debate in the House of Commons, on June 16, 1864, on a motion for the appointment of a select committee to enquire into the construction, expense, and working of the Charity Board. The motion was opposed by ministers, and negatived.

Charity Board.

of Commons.[q] The chief commissioner receives 1,500*l.* per annum, and the assistant commissioners 1,200*l.* each. The fourth commissioner is unpaid, and holds office during pleasure.[r] This office is always conferred upon the Vice-President of the Education Committee, so as to enable him to represent the Board in the House of Commons.[s] It has no parliamentary representative in the House of Lords, as the President of the Council is in no way connected with it.[t]

There are now attached to the Board four inspectors, a secretary, and twenty-seven clerks, of various grades.[u]

THE BOARD OF TRADE.

In reviewing the position and duties of this important department of state, it will be appropriate to consider (1) its constitution, and (2) its functions.

1. *The Constitution of the Board of Trade.*

Its origin.

The origin of this department dates from the year 1660, when Charles II. established two separate councils, one for Trade, and another for Foreign Plantations. These two councils were afterwards united as a board, which was commonly known as the Board of Trade. After undergoing various changes, this board was utterly suppressed and abolished, in 1782, by the Act 22 Geo. III. c. 82.[v] From this time affairs of trade were placed under the direction of a committee of the Privy Council, which was set apart by order in council in 1786, as the office of the Committee of Privy Council for the consideration of all matters relating to trade and foreign plantations; in other words, as a Board of Trade, with juris-

[q] 16 & 17 Vict. c. 137, secs. 2, 4, 5; amended by 18 & 19 Vict. c. 124, sec. 2.

[r] 16 & 17 Vict. c. 137, sec. 1. Civil Service Estimates, 1868–9, Class II. No. 29.

[s] Hans. Deb. vol. cxcii. p. 952.

[t] *Ibid.* vol. clxxxix. p. 170.

[u] Civil Service Estimates, 1868–9, Class II. No. 29.

[v] Thomas, Hist. of Public Departments, p. 77.

diction over the colonies of the British crown. The colonies continued in the charge of this department until the close of the American war, when they were transferred to the care of the Home Secretary.[w] Until a very recent period, however, all colonial acts requiring the confirmation of the Queen in council were referred to the Board of Trade, and were made the subject of minutes by the President. But now the Colonial Office merely refers to the board such Acts as relate to trade, for examination and report thereon.[x]

Of whom composed.

This Board, or Committee, is appointed by order in council at the commencement of every reign. It consists of a president,[y] with certain *ex officio* members, viz.:— the Archbishop of Canterbury, the Lord Chancellor, the First Lord of the Treasury, the principal Secretaries of State, the Chancellor of the Exchequer, and certain other Cabinet Ministers, with other Privy Councillors who do not form part of the administration, but are added to the board either on account of their official position, or because of their special knowledge of colonial questions. Of this latter class, some privy councillors are occasionally summoned to attend meetings of the board without being made permanent members thereof.[z] So recently as the year 1835, during the presidency of Mr. Poulett Thompson, meetings of the board used to take place, but it was afterwards considered advisable to dispense with them, partly on account of its being extremely inconvenient for high officers of state to attend, and so by degrees the office became departmental.[a] Nevertheless, within the last few years, it has happened that several important questions of colonial policy have arisen upon which the government have felt it advisable to consult all the members of the

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[w] See *ante*, p. 519.

[x] Dwarris on Statutes, p. 908. Hans. Deb. vol. cvi. p. 1120.

[y] There was also a Vice-President, until that office was abolished, as will be hereafter mentioned, in 1867.

[z] Rep. Com. Official Salaries, 1850. Evid. 872, 878, 959. Rep. Com. on Foreign Trade, 1864, pp. 128, 129.

[a] Rep. Com. on Board of Admiralty, 1861, p. 610.

Board of Trade. Upon these occasions, the whole board has been convened, and by this means the services of various eminent men, professional and non-professional, who were of the Privy Council, though not of the existing administration, have been secured for the consideration of grave constitutional questions. Upon the reception of reports of this description from the Committee of Trade, ministers have advised that the same should be approved by the Queen in council, and they have afterwards introduced bills into Parliament founded upon such reports.[b]

Present constitution.

At the present time, the Board of Trade, as a branch of the executive government, means nothing more than the president, who, with the assistance of the secretaries and other official staff, transacts all the business which has been assigned to this department.[c] The president is not necessarily and was not invariably a member of the Cabinet, until after the recommendation of the Committee on Foreign Trade in 1864, that henceforth he should always have a place therein, in order to insure for his advice and opinions on commercial matters a due consideration; which has since been carried out.[d]

Until 1867, when the office was abolished, there was invariably a Vice-President of the Board of Trade who was a privy councillor and a member of the administration, but who never had a seat in the Cabinet. Having no special or onerous duties to perform, the Vice-President usually held his office in connection with that of Paymaster-General, receiving (for the two offices) a salary of 2,000*l.* per annum, being the same as that allotted to the President.[e] The existence of two offices so similar as that of the President and Vice-President of the Board

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[b] See *ante*, p. 521. Grey, Parl. Gov. ed. 1864, p. 272.

[c] Rep. on Off. Sal. 1850. Evid. 762, 765, 799. Rep. on For. Trade, 1864, p. 249.

[d] Rep. Com. For. Trade, 1864. Evid. pp. 168, 245–254. The President has been in the Cabinet ever since 1865.

[e] *Ibid.* pp. 128, 246. Rep. Com. on Education, 1865. Evid. 624. And see *ante*, p. 458.

of Trade proved most anomalous and unsatisfactory. Each had an equal right of access to all official papers, and it was usual for the share of business to be undertaken by each to be a matter of private arrangement; the president, however, as the chief officer, being held responsible for everything. In the absence of the president, the vice-president filled his place, and, if sitting in a different chamber to his chief, he represented the department in Parliament, being necessarily held responsible for his own share in the business of the board.[f] But at length the office of vice-president fell into an unsatisfactory state of irresponsibility. Being able 'to refuse to do anything,' whilst the president could 'refuse to allow him anything to do,'[g] it was evident that any further continuance of the office was incompatible with the interests of the public service. Accordingly, advantage was taken of the opportunity afforded by an application of the Board of Trade to the Treasury in 1866, for some addition to the staff, owing to the large increase of duty which had recently devolved upon the board, to appoint a departmental committee, consisting of the vice-president and the financial secretary of the Treasury, to enquire into the constitution of the Board of Trade, with a view to the introduction therein of greater efficiency, and of a more economical administration.

Abolition of the Vice-President.

The committee presented an elaborate report on the state of the office, specifying the new work assigned to the board within the last few years, and making numerous recommendations for its improved organisation and management.

The principal alteration suggested was that there should be but one responsible head of the board, namely, the president; that there should be two secretaries, one of whom should sit in Parliament; that the office of vice-president

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[f] Rep. on Off. Sal. 1850, Evid. 775. Commons Papers, 1854, vol. xxvii. p. 129. Rep. on Board of Admiralty, 1861, p. 605.

[g] Corresp. Bd. of Trade, Commons Papers, 1867, vol. xxxix. p. 220.

should be abolished, and that there should be as many assistant-secretaries as might be required for transacting the business of the board.

It was also recommended that the office should be subdivided into four departments, each having an assistant-secretary, namely, one for railway matters, another for mercantile marine matters, another for harbours and foreshores, and another for general commercial business. An Act was accordingly passed to carry out the arrangement for the abolition of the office of vice-president, and to allow one of the secretaries to sit in the House of Commons.[h] The post of Paymaster-General, which of late years has been usually held in connection with this office, is proposed to be hereafter attached to the office of the Judge-Advocate General.[i] And the salary of the new parliamentary secretary has been fixed at 1,500*l.*, being a reduction of 500*l.* on the salary formerly given to the vice-president.[j]

The other recommendations of the committee, after being approved by the Board of Trade, were sanctioned by the Lords of the Treasury on January 7, 1867, and were directed to be put into immediate operation.[k]

Division of the office.

Accordingly, the office is now divided into six departments, each in charge of an assistant-secretary (in the case of the first four), or other principal officer. The departments are as follows:—1. The Commercial and Miscellaneous. 2. The Railways and Telegraphs. 3. That relating to Harbours, including Fisheries and Foreshores. 4. The Mercantile Marine and Wreck. 5. The Statistical. 6. The Financial, which includes the two branches, Seamen's Pensions, &c., and Accounts.[l]

Before proceeding to state the duties which appertain to these several departments, it will be necessary to direct

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[h] Stat. 30 & 31 Vict. c. 72. Hans. Deb. vol. clxxxvii. p. 67.

[i] Hans. Deb. vol. clxxxv. p. 358.

[j] *Ibid.* vol. clxxxvii. p. 873.

[k] Corresp. &c. rel. to the Board of Trade, Com. Papers, 1667, vol. xxxix. p. 215.

[l] *Ibid.* p. 220. And see Thom's Official Directory, U. Kingdom, 1868, p. 174.

attention to one or two other points affecting the constitution of the board.

The Board in relation to Foreign Trade.

In the year 1864, much dissatisfaction was expressed, both in and out of Parliament,[m] at the defective arrangements which existed in the Board of Trade for the furtherance of British interests in connection with foreign commerce. All applications to and from foreign countries were required to be transmitted through the Foreign Office, which occasioned serious delay and inconvenience in commercial matters. And the inferior position hitherto occupied by the Board of Trade, as a branch of the executive government, detracted from its influence and ability to deal successfully with mercantile questions. On April 15, 1864, the House of Commons appointed a committee to enquire into the existing arrangements between the Board of Trade and the office of Secretary of State for Foreign Affairs in regard to trade with foreign nations. This committee reported much evidence, and also recommended: 1. That the Board of Trade should be placed more nearly upon a footing with the Foreign Office, so as to insure that its opinions in matters of trade might have due weight; and that the president should always be in the Cabinet. 2. That the board should be put in direct communication with the members of the diplomatic and consular services, through the Foreign Office, in order to facilitate the prompt and speedy transmission to the board of information concerning foreign trade. And 3. That an officer should be appointed in the Foreign Office to conduct its correspondence with the Board of Trade.[n] The first recommendation, we have seen, has been complied with. On March 17, 1865, the House was informed that the government did not intend to carry out the second recommendation, which, in fact, had been only agreed to in committee by the chairman's casting vote; but that, in conformity with the third recommendation, they had

[m] Com. Pap. 1864, vol. lviii. p. 101.

[n] *Ibid.* vol. vii. p. 284.

created a new division in the Foreign Office, to be known as 'the Commercial and Consular Division,' which would be charged with correspondence upon all commercial matters, whether with the Board of Trade or any other department of the imperial government, or with any other persons or associations at home or abroad, upon matters affecting the interests of commerce.[o]

The President not to be in trade.

The opinion has always been entertained by the House of Commons, and ratified by the practice of successive administrations, that the control of the Board of Trade should never be entrusted to any man who was directly and personally engaged in any branch of trade in England. For it is the duty of the minister of trade in this country to take a large and impartial view of the interests of trade, not only as between persons engaged in particular branches of commerce, but also as to the relations of trade with the community at large; and it is of the utmost importance, and essential to the adequate discharge of the functions of this Board, and to the maintenance of its credit and confidence, that the members and presiding officers of the board should be themselves free from participation in trade, and above suspicion in that respect.[p] Accordingly, in 1865, upon Mr. Goschen being appointed Vice-President of the Board of Trade, he relinquished his position as head of a well-known commercial firm, and retired from the directory of the Bank of England. And in 1866, his successor in office, Mr. Stephen Cave, at once gave up his directorship in the Bank of England, and every other directorship he held at the time of his appointment, thinking it 'inconvenient that public men in his responsible position should be supposed liable to be actuated by personal or interested motives' when dealing with commercial or monetary questions.[q]

It is very desirable that the Board of Trade should be

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[o] Hans. Deb. vol. clxxvii. p. 1880. Civil Service Estimates, 1867-8. Class II. p. 8. And see *ante*, p. 513.

[p] Rt. Hon. H. Labouchere, Colonial Secretary, and ex-Vice-Presdt. of the Board of Trade, Hans. Deb. vol. cxlv. pp. 1139-1141.

[q] *Ibid.* vol. clxxxvi. p. 100.

represented in the House of Lords either by the president or the parliamentary secretary; but heretofore it has too often happened that both the presiding officers of the department have been members of the House of Commons, leaving the board without any direct representative in the other House, or in the Lords' committees upon questions concerning trade, an arrangement that has always proved most inconvenient and objectionable.[r] Representation in Parliament.

2. *The Functions of the Board of Trade.*

Formerly, the Board of Trade was mainly a consultative department, with scarcely any administrative duties to discharge. But of late years, under the authority of various Acts of Parliament, a large and increasing amount of executive business, of a very important and multifarious character, has been assigned to it.

The duties which now appertain to the department are principally as follows: To take cognizance of all matters relating to trade and commerce, and the protection of the mercantile interests of the United Kingdom; to advise other departments of state upon such questions—the Foreign Office in commercial matters arising out of treaties or negotiations with foreign powers; the Home Office with respect to the grant and provisions of charters, or letters patent from the crown; the Colonial Office upon questions affecting commercial relations with the colonies, and in regard to the construction and management of lighthouses abroad; and the Treasury as to alterations made or contemplated in the customs and excise laws, cases of individual hardship arising out of the operation of those laws, and points connected with the said laws which require solution. It also frequently devolves upon the Board of Trade to draft Bills and Orders in Council upon matters of trade. And it is the duty of the board to superintend the progress of Bills and questions before Present duties of the Board.

[r] Rep. on Off. Salaries, 1850, Evid. 125, 136, 329, 784.

Duties of the Board.

Parliament relating to commerce: to exercise a supervision over railway, patent, telegraph, harbour and shipping Bills, and other matters affecting trade or commerce[s]: and to conduct preliminary enquiries, under the authority of Parliament, into intended applications to Parliament for local Bills: also to receive deputations from parties whose interests may be affected by measures relating to trade which are pending in Parliament.[s]

In 1832 the Board of Trade was charged with the duty of collecting and publishing statistical information. Since 1840 it has exercised under various statutes a surveillance over all railway companies. About the same time the Government School of Design (since transferred to the care of the Education Office) was placed under its superintendence; the office for the Registration of Designs or varieties of Manufacture; and the office for the Registration of Joint Stock Companies—with various duties under the Companies' Act of 1862—have also been attached to it. Since 1850 a most important addition to the functions of the board has been made, by the Acts for regulating Merchant Shipping and Pilotage; for winding up the Merchant Seamen's Fund, and for Steam Navigation Inspection;[t] and a General Register Office for Merchant Seamen has been established, and placed under the superintendence of the board.[u] In 1855 the Meteorological department was established. In 1861 the Commission on Lights, Buoys, and Beacons recommended that the duty of representing the general lighthouse service in Parliament, moving and explaining the estimates concerning the same, &c. (a duty which had been performed by the Board of Trade since the passing of the Merchant Shipping Act of 1854), should be formally assigned either to the Board of Trade or to the Admiralty.[v] In 1862, and again in 1865,

[s] Rep. Off. Sal. 1850. Evid. 760, 761, 787, 789, 800. Murray's Handbook, p. 113. May, Parl. Prac. ed. 1868, p. 680. Rep. Com. For. Trade, 1864, p. 141.

[t] Commons Papers, 1847-8, vol. xviii. p. 489. *Ibid.* 1854, vol. xxvii. p. 129.

[u] Parkinson's Under Govt. p. 44.

[v] The Trinity House Corporation

certain powers and duties in connection with harbours and navigation under local Acts, were transferred from the Admiralty to the Board of Trade;[w] and authority has been given to the board to make provisional orders for the incorporation of pier and harbour companies, subject to the approval and sanction of Parliament.[x] In 1863 certain duties, under the Anchors and Chain Cables Act, were allotted to the board; and, by the Act 26 and 27 Vict. c. 124, the board was empowered to appoint Inspectors of Alkali Works, in order to secure the better condensation of the muriatic acid gas evolved therein. In 1866 the rights and interests of the crown in the shore and bed of the sea, and of every channel, creek, bay, and navigable river (with certain exceptions enumerated in the schedule of the Act) of the United Kingdom, as far up the same as the tide flows (*i.e.* the foreshore), were transferred from the management of the Commissioners of Woods to that of the Board of Trade.[y] And in the same year the Standard Weights and Measures Department was established. By the Sea Fisheries Acts of 1866 and 1868, certain powers are conferred upon the Board of Trade for the establishment, improvement, inspection, and maintenance of such fisheries in Great Britain. And by the Act 29 and 30 Vict. c. 89, the Board of Trade is authorised to appoint one member to the existing body of conservators of the whole of the upper part of the navigable waters of the river Thames, within certain prescribed limits, to aid in maintaining the preservation and improvement of this stream. In 1867, by the Act 30 and

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is the body charged by law with the administration of the Lighthouse system. The duty of the Board of Trade is confined to a general supervision and control of the expenditure for this service. Mr. Milner Gibson (Presdt. Bd. of Trade), Hans. Deb. vol. clxxi. p. 429.

[w] By Acts 25 & 26 Vict. c. 69; 28 & 29 Vict. c. 100.

[x] By General Pier and Harbour Act of 1861. For Acts confirming such Provisional Orders, see 29 & 30 Vict. cc. 56, 58, &c.

[y] By Act 29 & 30 Vict. c. 62 sec. 7. See a memorandum as to the duties of the Board of Trade with respect to foreshores and bed of the sea, Com. Papers, 1867–8, No. 18. And see Hans. Deb. vol. cxcii. p. 1814.

Duties of the Board.

31 Vict. c. 124, the Board of Trade was authorised to appoint Inspectors of Lime or Lemon Juice to be obtained from bonded warehouses for use as an anti-scorbutic on ships navigating between the United Kingdom and any place out of the same; and is required from time to time to issue, and cause to be published, scales of medicines, and medical stores suitable for different ships and voyages, with books of instruction for dispensing the same. In 1868, by the Act 31 & 32 Vict. c. 33, the board was authorised to collect and publish statistics of the importation and exportation of cotton.

The board has, moreover, duties to discharge under the Metropolitan Waterworks Act of 1852, under the Telegraphs Act of 1863, and under the Fisheries Convention Act of 1868. It advises the crown in the issue of royal charters, settling the terms of such as may be granted. It is also expected to originate, or to watch over, all legislative measures connected with trade, or affecting commercial interests, with the exception of questions relating to customs or excise legislation, banking or currency; which of late years have been exclusively undertaken by the Treasury.[z]

Having enumerated the several classes of duties which from time to time have been assigned to the performance of the Board of Trade, we now proceed to state the particular departments which have been entrusted with the execution of the same.

It has been already mentioned that a new classification of the office took place in 1867, whereby it was divided into six departments,[a] the special duties of which are as follows:—

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[z] Report of Commons Com. on Foreign Trade, 1864, p. 129.

[a] See *ante*, p. 666.

(1) *The Commercial and Miscellaneous Department, including also the Standards Department.*

To this division is allotted the preparation of treaties of commerce and navigation with foreign states or British colonies, and questions connected therewith; also, miscellaneous matters, such as art unions, copyright, trade-marks, companies, partnerships, &c.; and generally all questions concerning trade not assigned to any other branch. Commercial Department.

In 1864, an Act was passed 'to render permissive the use of metric weights and measures in the United Kingdom.'[aa] This Act had been long sought for by the advocates of decimalism,[b] and was the result of a parliamentary enquiry in 1862 by a Select Committee of the House of Commons, appointed to consider 'the practicability of adopting a single and uniform system of weights and measures, with a view not only to the benefit of our internal trade, but to facilitate our trade and intercourse with foreign countries.' The Committee came to the unanimous conclusion of recommending the introduction, 'cautiously and steadily,' of the metric or decimal system in the United Kingdom, as the only means for remedying the great inconvenience now experienced from the multitude of weights and measures in use.[c] Since the passing of the Act above mentioned, much has been done to promote the practical adoption of the new system, not only in England, but throughout the colonies and dependencies of the British crown.[d] Decimal system.

The Committee further recommended the establishment of a department of weights and measures in connection

[aa] 27 & 28 Vict. c. 117.

[b] See Report of Sel. Com. on Decimal Coinage, Commons Papers, 1852–3, vol. xxii. p. 387. Two Reports of the Decimal Coinage Commission, Com. Papers, 1859, Sess. 2, vol. xi. p. 1. *Ibid.* 1860, vol. xxx. p. 387.

[c] Commons Papers, 1862, vol. vii. p. 189.

[d] See papers relating to weights and measures (East India), Commons Papers, 1867-8, No. 16, and especially pp. 87, 89.

with the Board of Trade, to whom should be entrusted the conservation and verification of the standards, the superintendence of inspectors, and the general duties incident thereto. They also advised that the proposed department should take measures, from time to time, to promote the use and extend the knowledge of the metric system in the offices of government and among the people.

Standard Weights and Measures Department.

Accordingly, in 1866, an Act was passed, authorising the constitution, in the Board of Trade, of a standard weights and measures department,[e] in charge of an officer to be called the Warden of Standards, whose duty it shall be to take custody of the imperial standards, heretofore deposited in the Exchequer Office, and to conduct all such comparisons, verifications, and other operations, with reference to standards of length, weight, or capacity, in aid of scientific researches or otherwise, as the Board of Trade may direct; and to report annually to the Board, for the information of Parliament, on the proceedings and business of his department. This Act also provides for the periodical comparison and adjustment of the Board of Trade standards with the imperial standards, copies of which are deposited elsewhere.[f]

It is intended that hereafter the functions of the Warden of Standards shall be performed by the Assistant-Secretary of the Commercial Department, who will receive an allowance of 100*l.* a year for this additional duty.[g]

In June, 1867, an International Conference on weights, measures, and coins was held in Paris, composed of re-

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[e] For particulars as to the organisation of the Standards Department, its proceedings in regard to the metric system, and other matters, see First Report of the Standards Commission, July 24, 1868, Commons Papers, 1867-8; and First and Second Reports of the Warden of the Standards, presented to Parliament in 1867 and 1868.

[f] Act 29 & 30 Vict. c. 82, secs. 10–12. And see Hans. Deb. vol. clxxxiv. p. 817; vol. clxxxv. p. 406. See also Reports &c. on Standard Weights and Measures, Commons Papers, 1854, vol. xix. p. 933. *Ibid.* 1864, vol. lviii. p. 621.

[g] Civil Service Estimates, 1867-8, Class II. p. 11.

presentatives from twenty nationalities, who unanimously agreed to recommend to the nations concerned the adoption of measures to promote the study and use of the metric system as extensively as possible.[h] In 1868, a Bill was introduced into the House of Commons to supply an omission in the Act of 1864, the want of which had made that Act inoperative—namely, to authorise the Board of Trade to construct metric standards for the purpose of verifying and guaranteeing the accuracy of the metric measures in use under the said Act. The Bill further provided that after a certain number of years the metric system should be exclusively used, and the present measures abolished. After a long debate, the Bill was read a second time, on May 13, with an understanding that it should be then dropped until next session.[i] Meanwhile, a Royal Commission was appointed to consider the recommendations of the International Conference and their adaptability to the circumstances of the United Kingdom, which reported in the autumn of 1868.

(2) *The Railways and Telegraphs Department.*

Railway Department.

Through this division the Board of Trade exercises an active and vigilant supervision over railways and railway companies, not only with respect to their original formation, but also as to their subsequent management. Railways were first placed under the Board in 1840 by the Act 3 & 4 Vict. c. 97. A few years afterwards, these powers were transferred to a separate Board of Railway Commissioners, but in 1851, by the recommendation of the Committee on Official Salaries in 1850, this Board was abolished, and their powers resumed by the Board of Trade, pursuant to the Act 14 & 15 Vict. c. 64.[j] Further powers were given by the Act 31 & 32 Vict. c. 119.

[h] This report was presented to the House of Commons, pursuant to an address, in 1868.

[i] Hans. Deb. vol. cxcii. pp. 176–209; vol. cxciii. p. 425.

[j] Rep. on Official Salaries, 1850, Evid. 969, &c. Murray's Handbook, p. 114.

Railway Department.

In 1845, the Board of Trade were charged to make preliminary enquiries in regard to all proposed railway Bills; but this plan proved unsuccessful, mainly, it is alleged, because the enquiries of the officers of the Board were conducted in private. They saw the promoters and opponents of the various measures submitted to them separately, and received from each communications that were not communicated to the other party. Suspicions of unfair dealing were thus engendered, that wholly destroyed the authority of their reports. The Parliamentary Committees to whom the Bills were afterwards referred, declined to be guided by their conclusions, and the reports failed to carry the weight to which they were often intrinsically entitled. The scheme was therefore abandoned, and investigations into proposed railway undertakings are now entirely conducted by Committees of Parliament, notwithstanding the obvious disadvantages of this system, which have been increasingly felt of late years.[k]

The Board of Trade, however, still perform a duty in connection with railway legislation. From 1852 to 1867, by virtue of a sessional order of the House of Commons, the Board was required to report to the House upon every intended railway or canal Bill, or Bill affecting tidal waters or harbours. These reports were designed merely to call the attention of the Committees on such Bills to any deviations from the ordinary practice of Parliament in regard to the same, to evasions of the Consolidation Acts, to novel provisions or alterations of the general law, and to provisions contrary to the standing orders. This duty might perhaps have been more suitably assigned to some parliamentary functionary instead of to the Board of Trade. In fact, a similar duty is entrusted to one of the officers of the House of Commons.[l] It is not, therefore, surprising that these reports—having failed

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[k] Report of Sel. Com. on Private Bill Legislation, Commons Papers, 1863, vol. viii. Evid. pp. 98, 100, 347.

[l] *Ibid.* pp. 29, 30, 135.

to serve any useful purpose, and it being 'notorious that they were almost wholly neglected,' 'even by the Committee to whom the Bills were referred'—should now, for the most part, be dispensed with. By a resolution of the House of Commons, on March 14, 1867, it was agreed that henceforth those railway Bills only which affected tidal waters or harbours—which are reported on under the Harbours' Transfer Act of 1862—shall continue to be reported upon by the Board of Trade.[m] If any such reports should be unfavourable, it would be competent for the Committee on the Bill to require the attendance of the professional officers by whom they were drawn up, for the purpose of testing their conclusions or making further enquiries. The duty of the Board itself terminates upon the presentation of the reports to Parliament.[n]

By the standing orders of both Houses, notices of intended applications to Parliament for railway Acts must be deposited at the Board of Trade, together with plans, &c. of the proposed railway, before the introduction of the Bill.

Before a new line of railway can be opened for traffic, notice must be given to the Board of Trade, and its permission obtained, upon the report of an inspector appointed by the Board for this and other purposes. So also, when accidents occur, notice must be sent to the Board, and an inspector is generally directed to enquire into the case, upon whose report the Board may require alterations to be made in the mode of working the line, for the greater protection and security of the public. And on July 13, 1868, the House of Lords agreed to a resolution, to be afterwards made a standing order, that no railway Bill that proposes to increase existing rates for conveyance of passengers or goods shall be read a second time until a special report from the Board of

[m] Corresp. on Board of Trade, p. 1800. And see *ibid.* vol. clxxxvi. p. 704. Com. Papers, 1867, vol. xxxix. pp. 220, 229. Hans. Deb. vol. clxxxv.

[n] Hans. Deb. vol. cxci. p. 831.

Trade on the subject shall have been laid before the House.°

To this department belongs also all business connected with telegraphs.

(3) *The Harbours and Fisheries Department, and* (4) *The Marine and Wreck Department.*

Marine Departments.

These divisions are both of them very important, and, when united together as the *marine department*, transacted probably one-half of the ordinary business of the Board of Trade. They are now separated into distinct branches, and the Financial Department has also been set apart as a separate division. But as these arrangements are consequent upon the reorganisation of the Board of Trade in January 1867, it must here suffice to refer generally to the duties appertaining to these offices as the same existed prior to the recent changes.

By the Merchants' Shipping Act of the 17 & 18 Vict. c. 104 (extended and modified by the Act 25 & 26 Vict. c. 63), it became the duty of the Board of Trade to undertake the general superintendence of matters relating to merchant-ships and seamen, and to carry into execution the provisions of this Act and all other Acts on the same subject, with the exception of such Acts as relate to the revenue. Accordingly, it devolves upon the Board, through the appropriate department, to grant certificates to all masters and mates in the merchant service, to supervise consular accounts, and to control the building and maintenance of all lighthouses. The protection of tidal waters, the issue of orders concerning docks, piers, and harbours, and in relation to pilots, the administration of the Merchant Seamen's Fund Winding-up Act, the super-

° Hans. Deb. vol. cxciii. p. 1069. For further particulars as to the duties and responsibilities of the Board of Trade in respect to railways and railway accidents, see the speeches of Mr. Milner Gibson, Presdt. of the Board of Trade, in Hans. Deb. vol. clxxvii. p. 1132; vol. clxxx. p. 1169. See also *ibid.* vol. clxxxiv. p. 1602; and Corresp. on Board of Trade, Com. Papers, 1867, vol. xxxix. p. 213.

intendence of investigations into collisions and other disasters at sea, the oversight of lifeboats, and the reward of persons for saving life at sea or on the coast, wreck and salvage receipts, pensions to the mercantile marine, the wages and effects of deceased seamen, the auditing of shipping masters' accounts throughout the kingdom, and assisting the Admiralty in organising and superintending the Naval Reserve, so far as it concerns merchant seamen, are all of them matters which come within the supervision and control of the Board of Trade through these departments.

(5) *The Statistical Department.*

Statistical Department.

This division was created in the year 1832, and was originally intended to serve as a general statistical office, not exclusively or even necessarily attached to the Board of Trade, but exercising a general supervision over all statistical information coming into the hands of the Government, with a view to the publication thereof in one uniform manner. Hitherto this idea has been but partially carried out. The Statistical Department is nominally subordinate to the Board of Trade, and its chief officer entirely subject to the control of the President; but in practice it is usual to allow any other branch of the Government that may require statistical information to apply direct to the chief of this department.

The office is principally employed in preparing classified returns of all statistics explanatory of the financial, agricultural, commercial, and social condition of the whole British Empire, in abstracting the most important part of the statistics of other countries, and in compiling accounts, which are published monthly, of the trade and navigation of the United Kingdom.[p] Everything that reaches the Foreign Office which has any bearing upon our trade with foreign countries (and important commu-

[p] See Report on Official Salaries, 1850, Evid. 913, 918, 941. Rep. of Com. on Trade with Foreign Nations, 1864, pp. 135, 141, 245.

nications of this kind are regularly received from the British consuls abroad), is at once referred to the Board of Trade. Hitherto the Board has not been allowed to communicate directly with our foreign consuls, but only through the Foreign Office.[q] But it is probable that this restriction will be removed when the proposed reforms in regard to the Board of Trade have been carried into effect.

In addition to the valuable reports which are periodically issued by the Statistical Department, it is expected to be always prepared to furnish returns ordered by either House of Parliament, and such other statistical information, relating to questions of public interest, as may be required by members of the legislature or of the government.[r] A Comptroller of Corn Returns is attached to this office, whose duty it is to collect, and prepare for publication in the 'London Gazette,' weekly returns of the average price at which corn has been sold at the different market towns in the United Kingdom. This information was formerly made use of to regulate the amount of duty; and it is still serviceable for statistical and other purposes.[s]

Corn returns.

Departmental Library.

The library of the Board of Trade is directly connected with the Statistical Office. It is very extensive, and, unlike other departmental libraries, is 'far too large' for the purposes for which it is required. It has been suggested that this library should be made available for all the government offices, and that the Board should retain only a small collection for departmental use.[t]

(6) *The Financial Department.*

Financial Department.

We have already referred to the duties of this division in connection with the old Marine Department, of which

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[q] Rep. on Off. Sal. 1850, Evid. 857, 858, 867.

[r] *Ibid.* 855. There are some valuable suggestions for the more efficient and economical administration of this department, in Mr. Leone Levi's Evidence before the Commons' Committee on Parliamentary Proceedings, 1862, p. 46.

[s] Parkinson, Under Govt. p. 42.

[t] Corresp. rel. to Bd. of Trade, Com. Papers, 1867, vol. xxxix. p. 221.

it used to form a part. Particulars of the duties specially belonging to the department, under the new arrangements, will be found in pp. 7–9 of the correspondence on the Board of Trade laid before Parliament in 1867.

Staff.

The general oversight and control of the business transacted by the Board of Trade is under the direction of two secretaries, a parliamentary and permanent secretary, who, with the sanction of the President, arrange between themselves the distribution of the work. The great increase of business within the last few years has, as we have seen, necessitated the appointment of four assistant-secretaries and three 'assistants to the secretaries,' besides a large staff of officers and clerks, some of whom are professional men.[u]

Meteorologic Office.

It only remains to notice the *Meteorologic Office*, which has lately been disconnected from the Board of Trade, but was formerly a branch of the Marine Department. This office owes its origin to certain suggestions made by the well-known Lieutenant Maury, of the United States navy, to Sir James Graham, the then First Lord of the Admiralty, in 1854. It was first established in the following year, and has been instrumental in collecting and publishing numerous facts and observations useful to navigators, serviceable to seamen, and of public utility, as contributing to the preservation of human life. Through the publication of 'storm warnings' and 'forecasts' of the weather, and their extensive circulation along the British coast, a great saving of life and property has been already effected; and additional benefits may be hereafter anticipated from the study of meteorology, as an applied science, by those who avail themselves of the investigations of this office.[v]

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[u] Hans. Deb. vol. clxxv. p. 1601; vol. clxxxv. p. 357. Civil Service Estimates, 1868–9, Class II. p. 16. And see *ante*, p. 666.

[v] See Reports of the Meteorological Department of the Board of Trade in 1858, 1862, &c. Hans. Deb. vol. clxxxviii. pp. 1728-1739.

Meteorological Office.

It is considered to be doubtful whether meteorological science has yet arrived at sufficient perfection to admit of 'forecasts' of the weather being made with any certainty. But it is undeniable that great public benefits have resulted from the labours of Admiral FitzRoy, who, until his lamented decease in 1865, had the oversight and direction of this department. The system of utilising the observations of meteorological phenomena for the benefit of our seafaring population, which was introduced into England by Admiral FitzRoy, is being gradually adopted throughout the European continent;[w] and the British Government have been at considerable pains to ascertain by what method these researches could be best continued so as to secure more decided and permanent advantages to humanity.[x]

After the death of Admiral FitzRoy, the Government applied to the Royal Society to be advised as to the expediency of continuing the annual grants of money for the publication of 'forecasts' in the present state of the science of meteorology.[y] This led to the appointment of a departmental Committee to consider of the Meteorological Department, its origin, functions, the degree of success it has hitherto met with, and the improvements required for its more efficient service. This Committee presented an elaborate report containing much valuable information. They advised that the issue of 'daily forecasts' of the weather should be abandoned, as they had not proved to be generally accurate or useful; that the issue of 'storm warnings' should be continued, but on an improved plan; and that new and more comprehensive duties should be assigned to this department for the furtherance of meteorological investigations, as well for purposes of practical utility as for the advancement of science.[z]

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[w] Hans. Deb. vol. clxxvi. p. 1599.

[x] *Ibid.* vol. clxix. p. 1959; vol. clxxv. p. 1602. Commons Papers, 1863, vol. lxiii. p. 95.

[y] Hans. Deb. vol. clxxix. p. 1278.

[z] Report of Meteorological Committee, Commons Papers, 1866, vol. lxv. p. 329.

At this juncture a change of ministry occurred. Up to the close of the session of 1866 no steps had been taken in pursuance of the foregoing recommendations; but the new Derby administration undertook to give them a prompt and careful consideration.[a]

Early in the year 1867, after further communications between the Board of Trade, the Admiralty, the Treasury, and the Royal Society, it was announced that the Government, feeling itself incompetent to deal with a purely scientific matter, had resolved upon detaching the Meteorological Office from the Board of Trade, and transferring it to the management of a Scientific Committee appointed by the Royal Society (of which the Hydrographer to the Admiralty should be a member), who would give their time, labour, and talents gratuitously. This Committee is now charged with the duties heretofore performed by the Meteorological Department. Its operations comprise three distinct branches:—1. Collection of ocean statistics; 2. Issue of weather reports; 3. Establishment of meteorological observations in the British Isles. The new office is considered as being wholly separated from the state; its officers are appointed and controlled by the Scientific Committee aforesaid, and have been notified that they are not civil servants of the crown, or entitled to superannuation, or compensation allowances in the event of the abolition of their offices. But all appointments must be submitted for the approval of the Board of Trade, and the cost of the establishment is defrayed out of a vote (fixed for the year 1868–9 at 10,000*l.*) 'for the Meteorological Committee appointed by the Royal Society, at the request of the Government, to conduct meteorological observations and experiments.'[b]

The 'storm warnings' were entirely given up for a

[a] Hans. Deb. vol. clxxxiv. p. 1661.

[b] Papers relating to the Meteorological Department, Board of Trade, Com. Papers, 1867, vol. lxiii. p. 497. Hans. Deb. vol. clxxxvii. p. 1731; vol. clxxxviii. p. 1733. Civil Service Estimates, 1868–9, Class IV. No. 1. Report of the Meteorological Committee for the year 1867, presented to Parliament in 1868.

time as not being founded upon a sufficiently ascertained basis; but in consequence of strong remonstrances from various parts of the kingdom, by and on behalf of persons engaged in the coasting trade, against this determination—which were regularly referred for the consideration of the Scientific Committee—while the department still declines to prognosticate what will be the weather on any future day, the circulation of information on the subject of storms has been partially resumed. The weather reports continue to be published as heretofore, and information is now being collected from which it is confidently anticipated that 'sooner or later' positive rules for prognosticating the weather can safely be framed.[c] In January 1868, several 'land meteorological observatories' were established; and the department began again to transmit telegrams to the principal ports on the sea coast announcing the existence of atmospheric disturbances elsewhere.[d] 'These messages, which are now limited to a notice of "existing facts," are obviously capable of extension hereafter, in proportion as the basis upon which sound meteorological anticipations may rest shall be enlarged.'[e] Arrangements have also been made for the daily interchange of meteorological information between England and France.[f]

Departments subordinate to the Board.

The following departments are subordinate to the Board of Trade, under the provisions of the several Acts of Parliament constituting the same, viz.—The General Register and Record Office of Seamen; the Joint-stock Companies' Registration Office; the Designs Office; the Inspectors of Alkali Works; the Inspectors of Proving Establishments for Chain Cables and Anchors; the Inspectors of Lime

[c] Com. Papers, 1867, vol. lxiv. pp. 185, 205, 209. Hans. Deb. vol. clxxxv. p. 401. *Ibid.* vol. clxxxvii. p. 1731; vol. clxxxviii. pp. 426, 1188, 1736.

[d] See further particulars, with the new forms, &c., Commons Papers, 1867–8, Nos. 10, 96.

[e] General Sabine's Address to the Royal Society, November 30, 1867.

[f] See Commons Papers, 1867–8, No. 181.

Juice; the Inspector of Oyster Fisheries; and the Inspectors of Corn Returns. For the number of persons employed in these offices, and their remuneration, see the Civil Service Estimates for 1868–9, Class II. pp. 17–19.

THE LORD PRIVY SEAL.

Lord Privy Seal.

This is an office of great trust, and of a highly important character. It is nevertheless one of the offices of which the actual duties are neither onerous nor burdensome. They consist in applying the privy seal once or twice a week to a number of patents. From the time of Henry VIII., the privy seal has been the warrant of the legality of grants from the crown, and the authority of the Lord Chancellor for affixing the great seal. All grants of the crown for appointments to office, creation of honours, licenses, patents of inventions, pardons, &c., must be made by charters or letters patent under the great seal, and the command to the Lord Chancellor to prepare such a document is (as a general rule) by means of a writ or bill sealed with the privy seal, because the queen cannot herself make letters patent except by means of her ministers, who act according to her legal commands. Therefore, when a patent is written, the words 'by writ of privy seal' are inscribed, to show by what authority the Lord Chancellor seals the grant.[g] This office was reformed and regulated by the Act 14 and 15 Vict. c. 82.

The incumbent of this high office is invariably a Cabinet minister. Having but light official duties, he is at liberty to afford assistance to the administration in other ways, and is very often called upon to bestow his attention on

[g] See Report on Office of Privy Seal, Commons Papers, 1849, vol. xxii. p. 453.—Full particulars in regard to the instruments which now pass the Great Seal, pursuant to warrants signed by the king, without warrants of Privy Seal, pointing out also the instruments which require such a warrant, are given by Sir H. Nicolas, in his learned preface to vol. vi. of the Proceedings of Privy Council, pp. ccv.–ccxi.

subjects which require to be investigated by a member of the Government. Sometimes the Lord Privy Seal is despatched on a special mission abroad, at which times the seal is put into commission. This occurred when Lord Durham held the office, and afterwards when Lord Minto was Privy Seal.[h] The office is sometimes held in connection with another; for example, in 1860, during the temporary absence, upon public service abroad, of Lord Elgin, the then Postmaster-General, the Duke of Argyll, the Lord Privy Seal, was also appointed Postmaster-General *pro tem.*, but he only received one salary for the two offices—namely, that of Postmaster-General, which is 2,500*l.* per annum, while the salary attached to the office of Privy Seal is 2,000*l.*[i]

There is no patronage attached to this office, excepting in the appointments of a private secretary and two clerks, who transact the whole business of the office.[j]

THE LORD HIGH CHANCELLOR.

Origin of this office.

The authority which appertains to this high functionary of state is declared by the Statute 5 Eliz. c. 18 to be identical with that of the Lord Keeper of the Great Seal. According to Sir Edward Coke, the name is derived from his power of cancelling ('a cancellando') the king's letters patent when they are granted contrary to law. His proper title is 'Lord High Chancellor of Great Britain and Ireland,' the great seal which he holds testifying to the will of the sovereign in regard to acts that concern the whole empire; though there are some patents which are confined in their operation to Scotland or Ireland respectively, and which pass under the great seals appropriate to those particular parts of the United Kingdom.

The office is conferred by the sovereign himself for-

[h] Report on Official Salaries, 1850, Evid. 325, 1383, 1386, 1418 1423, 1436. And see Hans. Deb. vol. clxvi. p. 1019.

[i] Hans. Deb. vol. clix. p. 1235.

[j] Rep. Off. Sal. 1850, Evid. 1447, 1448. Civil Service Estimates 1868-9, Class II. No. 15.

mally delivering the great seal, and addressing its recipient by the title of office. There is not necessarily any patent or writ, although it is customary for letters patent to be afterwards prepared. After he has taken the oath of office, the Lord Chancellor is duly invested with full authority to exercise all the functions appertaining to his place and dignity. Being held during pleasure, the office is vacated by the voluntary surrender of the great seal into the hands of the sovereign, or by its being delivered up, at the command of the king, either to himself in person, or to a messenger bearing a warrant for its delivery under the privy seal or sign manual.[k]

The Seal's.

In ancient times, the king used occasionally to deliver to the Chancellor several seals of different materials, as one of gold and one of silver, but with similar impressions, and to be used for the same purposes. Hence the phrase of 'the seals' being in commission, &c. But for several centuries there has been but one great seal in existence at a time. At the commencement of a new reign, when it becomes necessary to make a new seal, the old one is broken, and the fragments are presented to the Chancellor for the time being.[l]

The great seal is considered as the emblem of sovereignty—the *clavis regni*—the only instrument by which, on solemn occasions, the will of the sovereign can be expressed. Absolute faith is invariably given to every document purporting to be under the great seal, as having been duly authenticated by royal authority. The law, therefore, takes anxious precautions to guard against any abuse of it. To counterfeit the great seal is high treason; and there are only certain modes wherein the seal can be lawfully used. Since the Revolution of 1688, it has been an acknowledged principle that, in order to prevent the crown from acting without the sanction of its responsible advisers, the great seal can only be constitutionally made use of by the proper officer to whom it has

[k] Campbell's Chancellors, vol. i. pp. 22, 23, 490. [l] *Ibid.*

The Great Seal.

been entrusted, and he becomes personally responsible for every occasion in which he affixes the great seal to any document; and cannot plead his sovereign's command as sufficient justification, apart from his own agreement to the act.[m]

With some few exceptions—where the Lord Chancellor has a prescriptive right of making appointments or passing certain grants without first taking the royal pleasure thereupon—the great seal cannot be used without the express command of the sovereign. By the statute 27 Henry VIII. c. 11, all crown grants (with certain exceptions) must issue upon a warrant under the signet to the Keeper of the Privy Seal, whose warrant becomes the authority to the Lord Chancellor to pass the same under the great seal. But, in practice, there are certain instruments appointing to office, or for the issue of certain royal commissions or warrants, for which a warrant of privy seal is not required; but which pass the great seal pursuant to warrants signed by the king, without being entered either at the Office of Privy Seal or of the Signet. Nevertheless, the law pays little regard to any other manifestation of the royal authority than those written instruments to which one or more responsible ministers of the crown have given their sanction. 'Any declaration of the *intention* of the crown to make grant,' says Sir Harris Nicolas, 'whether expressed verbally, by letters under the signet, or even by warrant of privy seal, is wholly useless, unless those preliminary measures be completely carried into effect by the great seal.'[n]

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[m] Campbell's Chancellors, vol. i. pp. 23-27. The forms whereby the Great Seal is authorised to be affixed to any document are herein described.

[n] Proceedings of Privy Council, vol. vi. pp. clxxxiii., cc., cciv.-ccxi. This volume contains a learned and curious history of the Great Seal and sundry of the other signets by which from time to time validity has been given to the written commands of the monarchs of England, pp. cxl.-ccxix. And see the case of Chancellor Yorke, in 1770, who died after his patent of peerage had passed through all the forms, except that the Great Seal had not been affixed to it, so that the title did not descend to his heirs. Campbell's Chancellors, vol. v. pp. 416, 427.

Such is the constitutional importance which is attached to the custody of the great seal, that whilst, comparatively speaking, little regard has been shown, as a matter of record, to the movements of the king, except when he quitted the realm, and none has ever been paid to the custody of the crown, even though it be the peculiar emblem of sovereignty, and is, metaphorically, the representative of monarchical authority, the great seal has very rarely been placed by the king in the hands of his Chancellor, or in those of any other person, even for a single day, without the fact being recorded.[o]

Speaker of the House of Lords.

The Lord Chancellor is, by prescription, *ex-officio* Speaker of the House of Lords, though he is not necessarily a member of that assembly.[p] It is only in modern times that it has become the practice to confer a peerage upon the Lord Chancellor; the first instance of the kind having occurred in 1603. On November 22, 1830, Henry Brougham, being then a member of the House of Commons, was appointed Lord Chancellor, and thereupon took his seat on the woolsack[q] as Speaker of the House of Lords. On the 23rd, he was created a peer of the realm; and on the same day a new writ was ordered to be issued by the House of Commons for the election of a member in the place of the Right Hon. Henry Brougham, 'now Lord Brougham.'

According to the standing orders of the House of Lords, it is the paramount duty of the Lord Chancellor to be in his place, as Speaker, during their lordships' sittings, and not to suffer any other duty to interfere therewith. In 1722, Lord Chancellor Macclesfield incurred the displeasure of the House for being absent at the hour of meeting, even though he pleaded that he had been sent for, at that time, by the king.[r] The modern usage,

[o] Proceedings of Privy Council, vol. vi. p. 149.

[p] Campbell's Chanc. vol. i. p. 16.

[q] According to constitutional practice, the woolsack, upon which the Lord Chancellor sits, is not considered as being within the limits of 'the House.' Macqueen, House of Lords, p. 24.

[r] Campbell's Chancellors, iv. 384.

however, is less strict. The occasional absence of the Chancellor, for a reasonable cause, excites no complaint, provided he gives notice to a Deputy Speaker to be in attendance, so as to protect the royal prerogative, and not oblige the House to have recourse to their ancient privilege of choosing their own Speaker.[s]

But, whether a peer or commoner, the Lord Chancellor is not, like the Speaker of the Commons, moderator of the proceedings of the House over which he presides. He is not addressed in debate; he does not name the peer who is to speak; he is not appealed to as an authority in points of order, and he may cheer, without offence, the sentiments expressed by his colleagues in the ministry. This arises from a constitutional distrust of a functionary who retains his office at the pleasure of the crown, and who is naturally an active political partisan. Nevertheless, the lack of a recognised authority to maintain order, without the necessity for appealing to the House collectively, is often productive of most inconvenient consequences.[t]

Political importance of this office.

In consideration of his exalted position, the Lord Chancellor is necessarily a member of the Privy Council. He has always been one of the principal advisers of the crown in affairs of state. In former times, he was frequently Prime Minister. The Earl of Clarendon, in the reign of Charles II., was the last who occupied this position; but his successors in office have invariably been leading members of the Cabinet, and have taken a prominent part in the direction of the national councils.[u]

In his legal capacity, the Lord Chancellor is the highest judicial officer in the realm; the visitor of all hospitals and colleges of royal foundation; and the general guardian, on behalf of the crown, of all infants, idiots, and lunatics. He issues writs for summoning and proroguing Parliament, and transacts all business connected with the custody of the great seal. He presides over the Court of

[s] Campbell's Chancellors, vii. 379, 516.

[t] *Ibid.* i. 18.

[u] *Ibid.* 16, 20.

Chancery; and also exercises a special jurisdiction, conferred upon him by various statutes, as original or appellate judge, in certain cases.[v] And it is his duty to take the pleasure of the sovereign upon Bills that have passed the two Houses of Parliament and await the royal assent.[w]

Union of judicial and political functions.

Objections have frequently been urged against the combination of judicial and political functions in the office of Lord Chancellor. But the weightiest authority appears to be in favour of this apparently anomalous union. The late Sir Robert Peel has borne testimony to the great advantage accruing to the Cabinet in its having the assistance of the highest equity judge, and to the fact that there is no proof of any injury to the interests of justice having taken place in consequence of the frequent changes of this functionary which are incidental to parliamentary government. He was of opinion that there was no ground for the apprehension that because this office is held upon a political tenure, unfit or unworthy persons might be selected to fill it. The peculiar advantages of a Lord Chancellor to a government would be wholly lost, if he were not a man of the highest character and professional reputation. If a ministry were to select an inferior man as Lord Chancellor, in order to obtain thereby political aid apart from professional service, they would sink immeasurably in public estimation, as well as in the opinion of the bar. It would be manifestly to their interest to choose a man of the highest character and legal ability, whose political views were, at the same time, of the same complexion as their own.[x]

There is a very considerable amount of patronage annexed to this office.

Church patronage.

He is the patron of all the king's livings (*i.e.* church benefices) of the value of twenty pounds and under. Out of 840 church 'livings' at the disposal of the crown, 720

[v] See Campbell's Chancellors, introd. to vol. i.

[w] *Ibid.* vol. v. p. 670.

[x] Sir R. Peel, before Com. on Official Salaries, 1850, Evid. 225, 226, 241, &c. And see *ante*, p. 159.

are in the sole and indisputable gift of the Lord Chancellor, without its being necessary for him to consult the crown in regard thereto; and he is free to dispose of these according to his notions of what is due to 'religion, friendship, or party.' The remaining 120 benefices in the king's books are in the gift of the Prime Minister.[y] By a statute passed in 1863, the Lord Chancellor was empowered to dispose of 327 of the smallest of the church livings in his gift and to apply the proceeds of the sale to the augmentation of their value. A return of sales effected is required to be annually laid before Parliament.[z]

The weight and influence which is attached to the office of Lord Chancellor has naturally obtained for this functionary a peculiar degree of independence in the distribution of patronage, even in times when the personal wishes of the sovereign in such matters were better respected than they have been since the system of parliamentary government has been matured. Thus we read that George II., upon his accession to the throne, made a great effort to obtain the control of the ecclesiastical patronage in the hands of the Lord Chancellor. But Lord King, who then held the great seal, so strenuously resisted this attempt, that his majesty was obliged to abandon it.[a] And it was said of Lord Chancellor Eldon that, in the exercise of his immense patronage, 'the solicitations of the royal family were his chief embarrassment.'[b] An amusing story is told of the Prince Regent forcing his way into Lord Eldon's bedchamber, where he lay ill of the gout, and declaring that he would never leave the room until he had obtained the Chancellor's promise to confer a mastership in chancery upon his friend Jekyll.

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[y] Rep. on Official Salaries, 1850, Evid. 1273, &c. Hans. Deb. vol. clxx. pp. 122, 131; Lord Chanc. Westbury, in Hans. Deb. vol. clxix. p. 1919; Campbell's Chancellors, vol. i. p. 20.

[z] Stat. 26 & 27 Vict. c. 120. For an account of the beneficial operations of this Act, see Hans. Deb. vol. clxxvii. p. 226.

[a] Campbell's Chancellors, iv. 604.

[b] *Ibid.* vii. 653, 665.

After a long resistance the royal pertinacity was successful, and Eldon gave in.[c] Upon another occasion Lord Eldon was firmer in defence of his peculiar privileges. A vacancy having occurred among the puisne judges, the Prime Minister took it upon himself to recommend a person to the king for the office, whereupon Lord Eldon remonstrated with his majesty, respectfully claimed the right of recommendation, and concluded by tendering his own resignation. This prompt proceeding had the desired effect; the Prime Minister abandoned his pretensions, and the Chancellor's nominee was appointed.[d]

Legal and judicial patronage.

The Lord Chancellor is generally permitted to have a voice in the nomination of the law officers of the crown; but this is not invariably the case, as the Prime Minister would naturally expect that his own views should prevail in regard to the filling up of these important political offices. Under any circumstances, however, the Lord Chancellor and the Prime Minister would doubtless consult together on this subject.[e]

The Lord Chancellor is privileged to take the royal pleasure upon the appointment of Puisne Judges, and himself swears in the new judge. He always informs the First Lord of the Treasury and the Home Secretary who it is that he has selected, but rather by way of information and friendly concert, and the First Lord would not think of interfering with the proposed appointment, unless, indeed, it were very objectionable.[f] Judges of the county courts are appointed by the Lord Chancellor, and are removable by him 'for inability or misbehaviour' in office.[g]

Judges in Ireland are appointed on the recommendation of the Lord-Lieutenant, and Scotch judges by the Home

[c] Campbell's Chancellors, vol. vii. p. 655.

[d] *Ibid.* p. 654.

[e] See *ibid.* vol. v. pp. 20, 29, 64, 239; vol. vii. p. 660.

[f] Sir R. Peel, in Rep. of Com. on Official Salaries, 1850, Evid. 1337, 2871.

[g] 9 & 10 Vict. c. 95, secs. 9, 18.

Secretary, who generally consults with the Lord Advocate thereupon.[h]

Chief Justices and the Chief Baron of the Exchequer are appointed upon the recommendation of the First Lord of the Treasury, after consultation with the Lord Chancellor.[i]

Puisne Judges are generally selected from amongst hard-working chamber counsel, not from amongst very leading advocates, who usually endeavour to obtain seats in the House of Commons, with an eye to the highest honours of their profession.[j] Puisne Judges are seldom promoted; although they undoubtedly include among their number men who are qualified to fill the highest judicial offices, and sometimes, under peculiar circumstances, they are chosen to fill the chief places in the courts to which they severally belong.[k]

There were formerly a number of sinecure places attached to the courts of law, in the gift of the judges; and though most of them have been abolished, several still remain, which are in the gift of the chiefs of the courts. The Puisne Judges have no patronage, strictly so called, except the right of appointing their marshals during the time they are on circuit. They have also the appointment of revising barristers, but they are bound to select for this office men who are specially qualified. And should the clerkship of assize fall vacant, the judge presiding at the time has the appointment.[l]

Until the year 1866, the Lord Chancellor possessed the power, under certain Acts of Parliament, of granting various pensions in the Courts of Chancery, Lunacy, and Bankruptcy, which were paid out of funds under the Lord Chancellor's control. But by the Act 29 & 30 Vict. c. 68, the practical responsibility and control in regard to the grant of pensions to all persons (save only the

Legal pensions.

[h] Rep. on Off. Sal. 1850, Evid. 1338, 1342.

[i] *Ibid.* 1341. (And see Corresp. Will. IV. with Earl Grey, vol. i. p. 50.)

[j] *Ibid.* 1609, 1614-1616.

[k] *Ibid.* 1355, 1360, 1361; and see cases cited, 1850.

[l] *Ibid.* 1677–1680, 1740. See a debate on the appointment of a certain clerk of assize, Hans. Deb. vol. cxcii. pp. 343, 497.

judges) who may hold offices connected with the administration of justice in the courts aforesaid, is vested in the Treasury, and must be administered in accordance with the provisions of the Superannuation Acts.[m]

Appointment of magistrates.

In order to insure the due administration of justice throughout the kingdom, much depends upon the efficiency and good conduct of the local magistracy. The right of appointing magistrates in counties, in England, devolves upon the Lord Chancellor, who is responsible to Parliament for the exercise of the royal prerogative in the appointment or removal of all magistrates.[n] But as he cannot be aware of the persons suitable for this office throughout the kingdom, it is customary for him to receive suggestions, or to consult with the Lord-Lieutenants of the county (as *custos rotulorum*)[o] in respect to every new commission of the peace that may be issued by him. He is not bound to accept anyone thus recommended, and may, if he thinks fit, consult members of Parliament, or others, upon whose judgment he can rely to assist his choice. In like manner, with regard to borough magistrates, while technically the Lord Chancellor is equally responsible for these appointments, it is customary for him to confer with the Home Secretary on the subject, upon whom rests, in fact, the full responsibility for the selection of individuals to compose the borough magistracy. To assist his choice when necessary, it is not unusual for the Home Secretary to confer with local town-councils on the subject. Magistrates ought not to be selected on account of their party politics, but such only should be appointed as are duly qualified to discharge the important duties entrusted to them. If men of one particular party are exclusively admitted to this responsible office, though justice itself may not be corrupted, the administration of it may be subjected to doubt

[m] Hans. Deb. vol. clxxxi. p. 428.

[n] See *ante*, vol. i. p. 361; and Lord Campbell's judgment, in Harrison *v.* Bush, 5 Ellis and Blackb. 351.

[o] See a learned paper on the office of Lord-Lieutenant and his deputies, in the Law Magazine for November, 1862, pp. 44–62.

and suspicion. Governments generally have endeavoured to act upon the principle that amongst the local magistracy there should be an admixture of the principles of both parties. Where a contrary practice has been followed by any administration, it has resulted in the endeavour, on the part of their successors in office, to redress the balance and to restore a due representation of the rival parties in the state, without placing upon the commission men who have been conspicuous for violent party conduct.[p]

Dismissal of magistrates.

The dismissal of magistrates from the commission of the peace takes place upon the discretion and responsibility of the Lord Chancellor. If he can satisfy himself that good grounds exist for the exercise of this power, there is no appeal from his decision.[q] While he would generally consult with the Lord-Lieutenant of the county before removing anyone from the commission of the peace, it is nevertheless his duty to act upon his own judgment. Lord Eldon was peculiarly careful in such matters, and would suffer no one to be dismissed from the magistracy until he had been heard in his own defence, and proved guilty of some offence which rendered him unfit to assist in the administration of justice.[r] Magistrates guilty of misconduct have occasionally been suspended for a time, as a secondary punishment less severe than dismissal. The constitutionality of this prac-

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[p] See Mirror of Parl. 1835, p. 40; 1838, pp. 5284, 5564. Hans. Deb. vol. lxii. pp. 506, 514; *ib.* vol. lxiii. p. 125. Police magistrates, although they have a more extended and important jurisdiction, are also appointed and are removable at the pleasure of the crown. When the Metropolitan Police Courts Bill was under the consideration of the House of Commons, a clause therein, permitting police magistrates to be 'superseded at the discretion of the *Secretary of State*,' was amended by inserting 'her majesty,' in lieu of the Secretary, as being more constitutional, and a greater safeguard against the arbitrary exercise of power; Mirror of Parl. 1839, p. 4388.

[q] Hans. Deb. vol. cviii. p. 961; see the correspondence relative to the dismissal of Mr. W. R. Havens from the commission of the peace for the county of Essex, in Commons Papers, 1862, vol. xliv. p. 347.

[r] Campbell's Chancellors, vol. i. p. 19; vol. vii. p. 665.

tice, although doubted by some, has been confirmed upon the high authority of Lord St. Leonards.[s]

Magistrates in Ireland are appointed and removed from office by the Lord-Lieutenant, acting upon the advice of the Irish Lord Chancellor.

Pecuniary allowances.

The salary of the Lord Chancellor is fixed by law at the sum of 10,000*l.* per annum, in lieu of fees, and inclusive of compensation for his services as Speaker of the House of Lords.[t] He is entitled to a pension of 5,000*l.* per annum on retirement from office, without any limitation as to the time he has served; provided only that if he again accept of any salaried office, the amount of the pension should be merged therein, so long as he may hold the same.[u] Ordinary judges are obliged to serve for a number of years to entitle them to a pension; but in the case of the Lord Chancellor this allowance is regarded as part of the inducement to a man of the highest legal reputation to leave his profession and embark in political life, with the liability, at any time, of being deprived of office upon a change of ministry. As there is no limitation of the number of ex-Lord Chancellors who may be in receipt of pensions at the same time, there have been instances, in our own day, of five retired Chancellors enjoying pensions together.[v]

The Law Officers of the Crown.

Crown law officers.

The Attorney-General, the Solicitor-General, and the Queen's Advocate-General, are the advisers of the crown in all cases of legal difficulty, particularly those which arise in the departments of the Privy Council and of the Secretaries of State for Foreign and Colonial Affairs, where the questions are often of a mixed nature, in-

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[s] Hans. Deb. vol. cxxvi. p. 29.

[t] By 14 & 15 Vict. c. 83, sec. 17. This is a considerable reduction of the emoluments formerly enjoyed by the Lord Chancellor: see Commons Papers, 1830–31, vol. iii. p. 445.

[u] 2 & 3 Will. IV. c. 111, sec. 3.

[v] Rep. on Off. Salaries, 1850, Evid. 223–231, 2210; Macaulay, Hist. of England, vol. v. p. 258.

volving points of civil and international law, as in maritime and ecclesiastical cases. They also advise in the framing of royal proclamations and of orders in council.

Attorney and Solicitor-General

The Attorney and Solicitor-General (sometimes in conjunction with other professional men) advise the heads of the other departments of state in matters relating to common or municipal law, and in regard to all prosecutions proposed to be instituted against public offenders. They conduct the prosecution or defence in all cases where proceedings are instituted for or against any public department or servant of the crown, or in obedience to the orders of either House of Parliament.[w]

As the representative of the sovereign in the courts, the prosecution of all public offenders is entrusted to the Attorney-General. All offences which disturb the peace or affect the welfare of the community, are considered as committed either against the king's peace, or against his crown and dignity. For though they seem to be rather offences against the public, yet, as the king is chief magistrate of the nation, he stands as the representative of the state and community, and as such is the proper prosecutor (as well as pardoner) of all public offences and breaches of the peace; and these prosecutions he conducts through his Attorney-General. In all proceedings at law, or in equity, which involve the security of the crown, the maintenance of the royal dignity, or the proper discharge of the kingly functions, the Attorney-General is the leading advocate. In prosecutions for seditious libels he is privileged to put a man immediately upon his trial, by filing what is called an '*ex officio* information,' without preferring an indictment or moving a court on affidavit for a criminal information.

The Attorney and Solicitor-General also jointly approve of all charters granted by the crown to municipal or other bodies. They exercise a separate discretion in advising the crown upon applications for letters patent for inventions.

[w] See May, Parl. Prac. edition 1868, p. 87.

The Attorney-General hears all applications upon petitions referred to him by the Home Secretary from persons claiming dignities or peerages, and reports thereon to the crown; and upon 'petitions of right' on a similar reference. He files informations in the Exchequer to obtain satisfaction for any personal wrong committed on the possessions of the crown, and conducts suits for the protection of charitable endowments in which the queen is entitled to interfere. He stands, in fact, in the personal relation of attorney to his sovereign, and appears in her behalf in all courts where the interests of the crown are in question.[x] The Solicitor-General participates in the labours of his colleague, and in the absence of the Attorney-General, or during a vacancy of his office, is empowered to do every act and execute every authority of the Attorney-General, his powers being co-ordinate.[y]

Neither of these functionaries can be employed against the crown or its officers in any cause, civil or criminal; but in ordinary cases, between one subject and another, they are frequently retained, where the matter in dispute is sufficiently important to warrant the expense. The Attorney-General is considered to be the leader of the bar; and such an office is sure to bring him considerable private practice, if he have time to undertake it.

One who has not held the office can have no conception of the labours of an Attorney-General. In addition to his public duties, he has to prepare himself for his private practice. During a session of Parliament he is kept officially at the House of Commons until a late hour of the night, and is obliged to be in court, during term time, at an early hour on the following morning.[z]

[x] Murray's Handbook, pp. 94–96. Dodd's Manual of Dignities, pp. 334–338.

[y] See Wilkes *v.* the King, in Wilmot's Opinions, 326–340.

[z] Rep. on Off. Salaries, 1850, Evid. 1795. The Attorney-General is summoned to the House of Lords by a writ, the same as that of a peer, excepting that it omits the words 'ad consentiendum.' On the trial of a peer he sits without the bar, if a member of the House of Commons, and within the bar if he is not. If he returns his writ, he may sit on the woolsacks; but then he is precluded

Their presence in Parliament

The presence of the law officers of the crown in the House of Commons is, as has been already remarked, of immense advantage to the working of parliamentary government.[a] It is, therefore, of the greatest importance that these offices should be conferred upon men of undisputed legal eminence, who at the same time possess the confidence of the country, and are able to command a seat in Parliament. Lord John Russell has shown it to have been the uniform practice, in the working of the British constitution, to require the assistance of the first lawyers in the country in the House of Commons, and afterwards to promote them to the highest situations on the bench, and by this means to induce the best legal talent to find its way into Parliament. He has also asserted that while in theory it may seem to be objectionable that a political career should be the avenue to the judicial ermine, yet in practice no evil results have followed; for that, reviewing the legal history of the country, it is impossible to point out any traces of political partiality in those who have been promoted from seats in Parliament to preside over our courts of law and equity.[b]

Promotion.

Upon a vacancy occurring in the office of Attorney-General, the Solicitor-General is almost invariably appointed to fill it; wherefore these two offices are naturally regarded as certain steps to the highest professional honours in the state. The Attorney-General of the day is considered, by general usage, not amounting however to absolute right, to have a claim to be appointed on a vacancy occurring in the Chief Justiceship of the Common Pleas or of the Queen's Bench.[c] It is a rare occurrence, though not altogether unprecedented, for the

from pleading in any private cause at the bar. From 1620 to 1670 he was excluded from the House of Commons. Since then he has always had a seat therein, unless casually, since the Reform Bill, from the difficulty of securing his election; see *ante*, pp. 80, 236, 2 Hats. Prec. 26.

[a] See *ante*, p. 371.

[b] Rep. on Off. Sal. 1850, Evid. 1369–1372.

[c] *Ibid.* 1847, 1789, 1848. But the usage has not been extended to the Court of Exchequer; see cases cited, both as to the usage and the exception, *ib.* 1850-52; see also Campbell's Chancellors, vol. iv. p. 634, vol. vi. p. 116 *n.*

Attorney or Solicitor-General to accept a puisne judgeship. The opinion of the bar is opposed to the Attorney-General accepting such an appointment, and upon one occasion when offered it was declined, on the ground that it was not of sufficient dignity for one who had filled the office of Attorney-General.[d]

Remuneration.

There is no salary attached to the office of Attorney or Solicitor-General.[e] The Committee on Official Salaries, in 1850, recommended that they should be allowed a salary, in lieu of fees; but their recommendation has not been carried into effect. The emoluments of the law officers of the crown are derived from fees which they receive for all official opinions, prosecutions, and reports. The fees are much less than those often obtained from private practice; but perhaps the number makes up for the smallness of the amount. The official income of the Attorney-General is said to have averaged somewhat over 10,000*l.* a year,[f] but he is necessarily obliged to relinquish much lucrative private practice. The Solicitor-General's emoluments are not much less than those of his colleague, and are derived from the same source. But they both perform many duties for the government for which they receive no remuneration. When desired to attend upon the Home Secretary (who is their superior officer) for ordinary consultation, they make no charge.[g] And no law officer of the crown, when a member of Parliament, receives any fee or emolument for preparing or supporting any measure before Parliament.[h] At the same time, if a Bill, whether introduced by government or by a private member, is referred to the law officers of the crown to consider whether it involves any question as to the rights of the crown, this is considered as part of their official

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[d] Rep. on Off. Sal. 1850, Evid. 1349–1352, 1617.

[e] See Campbell's Chancellors, vol. iv. p. 614 *n.*

[f] See *ibid.* vol. vii. p. 99 *n.*; see the fees payable to the Law Officers of the Crown on patents alone in Civil Service Estimates, 1868-9, Class II. No. 30.

[g] Rep. on Off. Sal. 1850. Evid. 1729, 1791–1800.

[h] Mirror of Parl. 1830, p. 427.

duty, and as entitling them to a fee, as their necessary official remuneration.[i]

Honours and etiquette.

George III., in 1788, laid down a rule, which has ever since been observed, that the Attorney and Solicitor-General, as also the judges, if not 'honourable' by birth, shall have the dignity of knighthood conferred upon them.[j] It is also customary to confer the rank of Queen's Counsel upon any person who is appointed a law officer of the crown, in order that, when he retires from office, he may not be reduced to the ranks.[k] By the etiquette of the bar, one who has served as Attorney or Solicitor-General cannot, after relinquishing office, again go on circuit, though he may return to other branches of his profession. On one occasion, where an Attorney-General had accepted a puisne judgeship, he expressly stipulated that he should not be obliged to travel circuit, but finding that such a stipulation could not be carried out, he was obliged to accept of the inferior office of Master in Chancery.[l]

Tenure of office.

The Attorney and Solicitor-General are appointed by letters patent, during pleasure. They are nominated to office by the Prime Minister, after consultation with the Lord Chancellor, whose opinion would naturally have great weight in the selection of these important functionaries.[m] They are expected to have seats in the House of Commons, and their tenure of office depends upon that of the administration of which they form a part.

Patronage.

The Patent Office is subordinate to the Attorney and Solicitor-General, who are, *ex officio*, two of the Commissioners of Patents; and the appointments in that office are made by the Attorney-General.[n] He also nominates the counsel to be returned in all criminal cases which he

[i] Hans. Deb. vol. cli. pp. 2191, 2347–2352.

[j] Campbell's Chancellors, vol. v. p. 504 *n.*

[k] *Ibid.* p. 403.

[l] Rep. on Off. Salaries, 1850, Evid. 1617, 1793, 1802.

[m] See *ante*, p. 693.

[n] Murray's Handbook, p. 95. But Parkinson states (p. 121) that appointments in the Patent Office are in the gift of the Lord Chancellor, who is the senior Commissioner.

is instructed by the government to prosecute on behalf of the crown. Queen's Advocate-General.

The Queen's Advocate-General advises the crown in questions relating to civil and international law. He prosecutes or defends on the part of the crown in all cases tried in the High Court of Admiralty. Though holding office during pleasure, he is not now regarded as a political officer, and is not removed upon a change of administration.[o]

The attention of Parliament has been frequently directed to the expediency of establishing a Department of Public Justice, to be presided over by a responsible minister having a seat in Parliament; and to the propriety, in connection therewith, of making better provision for drafting and superintending the progress of public Bills through Parliament, especially such Bills as may be introduced by the government. Department of Public Justice.

In the year 1854, a departmental Committee of enquiry into the establishment of the Irish Office, in London and Dublin, adverting to the question of retaining a counsel for this office in London—a functionary hitherto chiefly occupied in drawing Bills for Parliament connected with Ireland, and assisting in the preparation of other government Bills — recommended the consolidation of the offices of counsel to the Irish Office, and of solicitor for Scotland, with that of the counsel at the Home Office, and the employment of the latter functionary to draw or arrange the Bills of the different public departments of the United Kingdom, receiving, when necessary, the assistance of the law officers in Parliament for the Scotch or Irish Bills.[p] The office of counsel to the Irish Office was abolished, but no measures were taken to create the new consolidated office, as above recommended.[q]

In the session of 1855, the Select Committee of the House of Commons on Public Prosecutors reported to the House the opinions of Lord Brougham, of the Lord Advocate (Moncrieff), of Sir A.

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[o] Murray's Handbook, pp. 94, 95.

[p] Commons Papers, 1854, vol. xxvii. pp. 115–118.

[q] Hans. Deb. vol. cxli. p. 1034. At present, there is a 'counsel for drawing Bills for Parliament' attached to the Home Office, who receives a salary of 2,000*l.* a year; and a 'draftsman of Bills for the Irish Government,' attached to the Chief Secretary for Ireland's Office, in Dublin, with a salary of 600*l.* a year; Civil Service Estimates, 1868-9, Class II. Nos. 3 and 8.

Department of Public Justice.

Cockburn (Attorney-General), and of Mr. Waddington, Under-Secretary of the Home Department, in favour of the appointment of a responsible minister of justice, with a seat in Parliament.[r]

On February 12, 1856, Mr. Joseph Napier, who was a member of the Select Committee above mentioned, moved a resolution in the House of Commons, to affirm that, 'as a measure of administrative reform, provision should be made *for an efficient and responsible Department of Public Justice*, with a view to secure the skilful preparation and proper structure of Parliamentary Bills, and promote the progressive amendment of the laws of the United Kingdom.' The government generally appeared to incline favourably to this proposition, but deprecated the hasty attempt to create a new cabinet minister with such extensive powers. Finally, Mr. Napier withdrew his motion, and moved another, omitting the words (in italics) concerning the Department of Public Justice, which was agreed to by the House without a division.[s]

Shortly afterwards, the Statute Law Commissioners, in their second report, recommended the appointment of a responsible officer, with a staff of assistants, to report on every Bill introduced for the alteration of the law, and to assist in the proper framing of such Bills; and the government expressed their intention of giving effect to this recommendation.[t]

On February 12, 1857, Mr. Napier moved an address to the queen that she would be pleased to take into consideration, as an urgent measure of administrative reform, the formation of a separate and responsible department for the affairs of Public Justice. The government consented to this motion, but with an intimation that they would endeavour to carry it out, not by creating a new Minister of Justice, but rather by attaching the proposed new department to some existing branch of the executive; and the address was agreed to.[u] On February 16, the queen's answer to the address was reported, that she would 'give directions that the subject may receive the attentive consideration which its importance demands.'[v] Mr. Napier was afterwards appointed Chancellor of Ireland; and when he left the House of Commons no other member pressed this question upon the notice of government.[w] But it continued, as heretofore, to be warmly advocated by Lord Brougham, though without success. In the session of 1862, after

[r] Commons Papers, 1854–5, vol. xii. p. 291. And see a communication from the Law Amendment Society, recommending the appointment of a Public Prosecutor, in the Law Times, Jan. 2, 1869, p. 164.

[s] Hans. Deb. vol. cxl. pp. 614–668.

[t] *Ibid.* vol. cxliii. p. 1086; vol. cxliv. pp. 84, 451, 489. But the proposed appointment was afterwards postponed indefinitely (*ibid.* vol. cxlviii. pp. 1168, 1734; vol. cli. p. 1196), and has not yet taken place.

[u] *Ibid.* vol. cxliv. pp. 539-576.

[v] *Ibid.* p. 700.

[w] Social Scien. Transac. 1862, p. 199.

a fruitless attempt to elicit a public statement of the intentions of government upon this subject, his lordship was privately informed by a leading member of the administration that nothing whatever had been concluded upon it.[x] Nor has anything since been done in compliance with the address of the House of Commons.

Chancellor of the Duchy of Lancaster.

This functionary is an officer of great eminence in the government, and is frequently a Cabinet minister. He holds his office by letters patent, and, if a peer, takes precedence according to his rank in the peerage; if not, he takes precedence next after the Chancellor of the Exchequer, and immediately before the Lord Chief Justice of the Queen's Bench. In ancient times this office was one of considerable importance, but within the last century it has become practically a sinecure, the duties attaching thereto being few and unimportant. The office is now regarded as a political appointment, and is usually filled by a leading statesman, not necessarily a lawyer, whose time is at the service of the Government for the consideration of larger questions which do not come immediately within the province of other departments, for the preparation of measures of legislation, and the advocacy of the same through Parliament, of one or other House of which he is expected to be a member. The emoluments of the office average about 2,000*l.* per annum.[y]

The Right Hon. Spencer Perceval was appointed to this office in 1807; and when he became First Minister of the Crown, in 1809, he continued to hold the Chancellorship of the Duchy of Lancaster conjointly with the two superior offices of First Lord of the Treasury and

[x] Hans. Deb. vol. clxviii. pp. 131, 214. Lord Brougham's letter to Earl of Radnor, Law Magazine, N.S. vol. xiv. p. 64. See an article in the Law Mag. for Feb. 1866 (*ib.* vol. xxi. pp. 33-41), pointing out the necessity for the appointment of a board of able and experienced lawyers to superintend the legislation in both Houses of Parliament, and suggesting the principal duties to be required of them.

[y] Haydn's Book of Dignities, p. 189. Murray's Handbook, p. 210.

Chancellor of the Exchequer. This is the only instance on record of the three offices being held by one individual.[z]

POOR-LAW BOARD.

Its origin.

This Board takes its origin from the Statute 4 & 5 William IV. c. 76, to control and render uniform the administration of poor relief in England and Wales, under which Commissioners were appointed to carry out the important duties then for the first time entrusted to a central authority. These Commissioners were not authorised to sit in the House of Commons, but were required to report their proceedings periodically to the Secretary of State for the Home Department, and through him, annually, to Parliament. The Commission was appointed only for a limited period; it was continued by several Acts, and would have expired in 1847. The magnitude of the interests concerned, the numerous details connected therewith, and the difficult task imposed upon the Home Secretary in explaining and defending the same in Parliament, led, on a renewal of the Commission, to its erection into a separate and independent Board, presided over by a responsible minister who is eligible to a seat in the House of Commons.[a] This change was effected by the Statute 10 & 11 Vict. c. 109, which reorganised the Board, making it to consist of a President, to be appointed by the queen, and of four Cabinet ministers, who are members *ex officio*, viz.—the Lord President of the Council, the Lord Privy Seal, the Home Secretary, and the Chancellor of the Exchequer. The President of the Board is the only paid functionary, and he has the general exercise of the authority of the Board, and is responsible for all that is done.

Of whom composed.

Subject to the approval of the Treasury, the President appoints the various Poor-law Inspectors, clerks, and ser-

[z] See *ante*, vol. i. p. 408; Haydn, p. 189, *n.*

[a] See Hans. Deb. vol. cx. p. 230; *ante*, p. 243.

vants required to carry out the provisions of the statute, with the exception of the secretaries, who are chosen by the Prime Minister, though formally appointed by the President. Any officer of the Board may be dismissed upon an order signed by the President.[b]

The Poor-law Board was originally a temporary Commission, and its existence was renewed, from time to time, by Acts of Parliament. But at first the Board was regarded by the legislature with so much jealousy, that it was difficult to obtain the prolongation of its authority. But its duties have been invariably discharged with such care and diligence, that it is now looked upon as being the rightful guardian of the interests of the poor.[c] Accordingly, in 1867, the Poor-law Board was made permanent, with a considerable enlargement of its powers;[d] and by the Metropolitan Poor Act, of the same year, additional duties were assigned to it.[e]

Made permanent.

The Board is charged with the administration of the law for the relief of the poor in England and Wales, and the amount of business it transacts is large, and of increasing importance. Of late years, there has been a great fluctuation in the amount of pauperism in England and Wales. In 1848, upwards of six million pounds were expended in poor relief, while in 1861, and again in 1865, it barely exceeded four millions. But it rose again, in 1867, to nearly seven millions. Exceptional cases—like that arising from the distress amongst the operatives engaged in cotton manufactures in 1862–5, and amongst those employed in ship-building in 1866–7—have swelled the amount of suffering; and although, at such times, private contributions have borne the greater part of the burden, yet there has always been much addi-

Its duties.

[b] Murray's Handbook, p. 201. Report on Misc. Expend., Commons Papers, 1847-8, vol. xviii. p. 344. Report Com. on Education, 1865, Evid. 1887. Hans. Deb. vol. clxxxv. pp. 1674, 1687.

[c] Earl of Kimberley, Hans. Deb. vol. clxxxvi. p. 109; and see *ibid.* vol. clxxxv. p. 1696.

[d] Act 30 & 31 Vict. c. 106.

[e] Act 30 Vict. c. 6; Hans. Deb. vol. clxxxv. p. 1695.

tional pressure upon the poor relief fund. Nevertheless, apart from these exceptional instances, the demand upon the poor rates has shown a tendency to diminish.

The actual duties of the President of the Poor-law Board are exceedingly onerous. 'There is not a question which may arise upon anything which affects the moral, physical, or economical condition of the poor, that must not be examined into and decided by him; and in order that he may give a decision, he must read all the papers that bear upon the subject.' He has also to determine all matters of complaint against medical men and other officials who may be charged with misconduct or neglect of paupers. 'Besides all this, additional permanent business has been thrown upon the office, by the transfer, within the last two years, from the Privy Council to the Poor-law Board, of the management of the education of the poor, so far as it depends upon state grants, which, of itself, has produced upwards of five hundred reports, all of which have to be read and considered.' [f]

General orders, affecting parishes and unions, must be signed by three members, at least, of the Poor-law Board. Common orders are merely signed by the President, and countersigned by the secretary. But the President is equally responsible for both. In fact, his colleagues append their signatures to general orders, as a matter of course, when they see his name thereto.[g]

Representation in Parliament.

By the ninth clause of the Poor-law Amendment Act, of the 10 & 11 Vict. c. 109, one only of the two secretaries of the Board is declared capable of sitting and voting in the House of Commons upon the footing of the Under-Secretaries of State—that is to say, without the necessity for reelection upon being appointed to office.

It has been made a question, of late years, whether it is necessary that the Board should be represented in Parliament by two officers, the President and a secretary.

[f] Rt. Hon. C. P. Villiers, Presdt. of the Poor-law Board, Hans. Deb. vol. clxxvii. pp. 462, 463.

[g] *Ibid.* vol. clxxxv. pp. 1674, 1686, 1687.

But, inasmuch as the interests they represent involve 'grave considerations of a political and general character,' and 'principles which can only be dealt with by government with reference to questions of a much wider application,' the government, with the approbation of the House of Commons, have decided that it is not desirable to make any change in this respect. It is alleged, moreover, that great public advantage has accrued from the introduction into Parliament of these functionaries, not only on behalf of the poor-law administration, but on account of the assistance in other matters which they are able to render to their colleagues in the Ministry.[h]

Until the appointment of the Earl of Devon as President of the Poor-law Board, in 1867, the office had uniformly, from its first institution, been held by a member of the House of Commons. Lord Devon's appointment took place on account of his special qualifications for the office, he having served for several years, with remarkable ability, as permanent secretary to the Board, before his accession to the peerage.[i] By this arrangement, the department has at length obtained a representative in the House of Lords; for hitherto neither the President nor the political secretary had ever sat in that House.[j]

In the Cabinet.

The President was first admitted to a seat in the Cabinet in the year 1859.[k]

Staff.

In addition to the political secretary, who receives 1,500*l.* per annum, and who quits office upon a change of government, there is a permanent secretary, who receives 1,000*l.* a year, two assistant-secretaries, and a number of inspectors and clerks.[l]

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[h] Report on Public Offices, Commons Papers, 1854, vol. xxvii. pp. 247, 248. Lord Palmerston, Hans. Deb. vol. clxxvii. p. 237. A motion to abolish the office of Parliamentary Secretary of the Poor-law Board was negatived by the House of Commons, on February 20, 1865, by a large majority; see also Report on Official Salaries, 1850, Evid. 60.

[i] Hans. Deb. vol. clxxxvii. p. 876. Burke's Peerage, 1867, p. 330.

[j] Report Commons Com. on Education, 1865, Evid. 2318, 2474. Hans. Deb. vol. clxxvii. p. 466.

[k] Annual Register, 1859, p. 374.

[l] Civil Service Estimates, 1868-9, Class II. No. 20, Hans. Deb. vol. clxxxvii. p. 858.

Irish and Scotch Boards.

There are separate Poor-law Boards for Ireland and Scotland. The Secretary for Ireland is an unpaid member of the Irish Board, and represents it in Parliament. The Lord Advocate usually represents the Scottish Board.[m]

THE GOVERNMENT OF SCOTLAND.

Scotland.

Since the union of England and Scotland into the kingdom of Great Britain, in the year 1707—a union which was not merely legislative, but also executive—the government of Scotland has become a part of the general administration of Great Britain. The business of government was thereafter under the control of officers who acted for the entire United Kingdom—except that, to meet some difficulties which were experienced in the collection of the revenue, separate commissions of customs and excise were for a time continued, but have since been abolished. The Act of Union provided, however, that a separate seal should be kept in Scotland, to be used in all documents relating to private rights or grants which formerly passed the great seal of Scotland; and that the Scottish courts of law should continue separate and independent.

At the union a third Secretary of State was appointed in London, to take charge of Scottish affairs. But in 1746 this officer was discontinued, and his duties divided between the two remaining Secretaries of State, until the Home Department of the Secretariat was organised, in 1782. Then the business relating to Scotland, which was necessarily of a domestic character, fell to the Home Secretary, by whom it has since been transacted, having become, in fact, amalgamated with his general duties. The Lord Advocate is his adviser in matters particularly affecting Scotland, and may be regarded as his under-secretary for that part of the kingdom.[n]

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[m] Commons Papers, 1847-8, vol. xviii. pp. 352, 353. Civil Service Estimates, 1868-9, Class II. Nos. 32 and 37.

[n] Murray's Handbook, p. 278. And see *ante*, p. 374.

At the period of the union, the executive government of Scotland consisted of the following great officers of state:—A Lord High Chancellor, a Lord Justice-General, a Lord Justice Clerk, a Lord Privy Seal, and a Lord Advocate. By degrees, the entire political functions of these offices devolved upon the Lord Advocate. To him all inferior officers in the kingdom look for advice and direction, and he is entrusted with the particular care of the whole executive government of Scotland at the present time.[o] Nevertheless, the Home Secretary exercises a general control over all his acts. Not only in legal and criminal business, but in the exercise of church patronage, he acts upon his own judgment, whatever recommendations may be made by the Lord Advocate.[p] Lord Advocate.

The Lord Advocate is the chief law officer of the crown for Scotland. His duties are very onerous and multifarious. He is necessarily a member of the Faculty of Advocates, and is generally selected from amongst the most able men of his political party. He acts as Attorney-General and public prosecutor for Scotland, and has the conduct and superintendence of the whole criminal business of that country. In the discharge of his duties as public prosecutor, he has the assistance of the Solicitor-General and four practising advocates appointed by himself, and called advocates-depute. These functionaries together form the crown counsel. There is an agent or solicitor in Edinburgh, appointed by the Lord Advocate, and called the crown agent. The crown counsel and crown agents are all salaried officers, and vacate their offices with the administration.[q]

The Lord Advocate is the legal adviser of the crown in

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[o] Lord Advocate Hope's speech in the House of Commons, June 22, 1804, on a motion to censure him for certain alleged oppressive and illegal conduct; Parl. Deb. vol. ii. p. 801; and see the powers conferred upon the Lord Advocate by the Public Health (Scotland) Act, 1867, 30 & 31 Vict. c. 101, secs. 10, 11.

[p] See Hans. Deb. vol. clxxxvi. pp. 408-410.

[q] Fortnightly Review, vol. i. p. 680.

Scottish affairs, and has the preparation and charge of Bills in Parliament concerning Scotland. He is also in constant confidential communication with the Home Secretary, and transacts on his behalf many of the administrative duties for Scotland which in England engage the attention of that functionary. He has to advise the Home Secretary as to the distribution of a large portion of the patronage of the crown in Scotland, and especially as regards the principal legal appointments therein. As an officer of state in Scotland, he has under his command the staff not only of advocate-deputies, but also of procurators-fiscal[r] throughout the country, by means of whom he can, on the shortest notice, collect information on all subjects. He is therefore entrusted substantially with the conduct of Scotch business in the House of Commons, on account of the peculiar facilities he possesses for the adequate performance of the same. He receives a salary of 1,500*l.* per annum, with an allowance of 1,000*l.* in commutation of certain fees. His other allowances are about 500*l.* a year, making a total of about 3,000*l.*[s]

Solicitor-General.

There is also a Solicitor-General for Scotland, whose duties resemble those of the similar officer for England. He is retained in the same crown cases as the Lord Advocate, and takes charge of the criminal business in his absence. Neither the Lord Advocate nor the Solicitor-General attends circuit: that is done by their deputies, who also assist in the discharge of criminal prosecutions. Both these officers, however, attend trials in the High Court of Justiciary at Edinburgh, and give personal attention to every case of importance which is to be brought up at any circuit. The emoluments of the Solicitor-General do not much exceed 1,000*l.* a year.[t]

Both the Lord Advocate and the Solicitor-General hold political offices, which terminate with the administration

[r] For an explanation of the duties of these functionaries, see Commons Papers, 1854-5, vol. xii. pp. 25-27; Fortnightly Review, vol. i. p. 681.

[s] Murray's Handbook, p. 282. Rep. on Off. Salaries, 1850, Evid. 2965, 2966.

[t] *Ibid.* Evid. 2970-2980.

by whom they are appointed. Although both are eligible to seats in the House of Commons, it rarely happens that they have seats together; generally the Lord Advocate only is a member of that assembly.[u] To facilitate the transaction of Scottish business, one of the Lords of the Treasury, as we have seen,[v] is selected from amongst the members of the House of Commons representing Scotland, or from amongst leading men likely to be able to obtain a seat for a Scottish constituency, to whom the general supervision of Treasury business concerning Scotland is entrusted, and who also assists the Lord Advocate in the charge of Scottish business in Parliament, with the exception of legal business, for which the Lord Advocate is wholly responsible.

Lord of the Treasury.

The office of the Queen's and Lord Treasurer's Remembrancer in Scotland is also one of considerable importance. It acts as the pay department of moneys voted for civil services in Scotland, in like manner as the Paymaster-General in England. It devolves upon this department to examine and audit a numerous class of Scotch accounts, to prepare annually, in detail, the estimates of civil services for Scotland, and to fulfil many other important duties connected with the public expenditure, &c. in Scotland. This office has recently been subjected to the provisions of the Exchequer and Audit Departments Act of 1866, with the view of assimilating its system to that of the corresponding departments in England.[w]

Remembrancer's office.

The Queen's Lord High Commissioner to the General Assembly of the Church of Scotland is, to a certain extent, a political office, being generally, although not invariably, changed with the administration of the day.

Commissioner to General Assembly.

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[u] Rep. on Off. Sal. 1850, Evid. 2985, 2986.

[v] *Ante*, p. 450.

[w] For a report on the duties of the Queen's and Lord Treasurer's Remembrancer's office, see Minutes, &c., issued under the Exchequer and Audit Departments Act, Commons Papers, 1867, vol. xxxix. p. 400. For particulars of the cost of the office, see Civil Service Estimates, 1868-9, Class II. No. 10.

This officer is the representative of the sovereign at the meetings of the General Assembly of the Established Church of Scotland in Edinburgh, and has a right to be present at all the meetings of that body. At the opening of the sessions, he delivers a speech from the throne, and at the conclusion of the proceedings dissolves the Assembly, and appoints the time for its next meeting. But the Assembly claim a similar right, and by their Moderator likewise announce their dissolution. The Commissioner is regarded as a medium of communication and link of connection between the sovereign and the Presbyterian Church of Scotland, the integrity of which, as the established religion of that country, has been guaranteed by the Act of Union.

The Lord High Commissioner receives a fresh commission every year; but it is customary to reappoint the same individual, so long as he is able and willing to act, during the existence of each administration. The Commissioner is required to maintain a certain amount of state, to uphold the honour and dignity of his office. He holds levées, as the representative of royalty, which are generally attended by persons of all denominations, out of respect for his position; and he gives a series of entertainments during the time (usually about ten days) when the Assembly is in session. His salary (which is paid out of the Consolidated Fund) is 2,000*l.* a year; and he appoints his own purse-bearer and chaplain.[x]

THE GOVERNMENT OF IRELAND.

Ireland.

The kingdom of Ireland, which, before the Act of Union (39 & 40 Geo. III. c. 67) in 1801, was connected with the crown of England by prerogative alone, has since become united in its legislature, its church, and its

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[x] Rep. on Off. Sal. 1850, evid. 3323-3371. See further particulars in regard to this functionary in this Evidence; also Murray's Handbook, p. 279; Hans. Deb. vol. cxci. p. 1884.

revenues. Unlike Scotland, however, the Irish executive still remains, to some extent, separate and distinct. But this independence is merely nominal; the pageantry of a court and the outward symbols of royalty are kept up, whilst practically the entire direction of the government of Ireland is in the hands of the English Cabinet.[y]

Lord-Lieutenant.

The government of Ireland is formally entrusted to the Queen's Deputy or Viceroy, who is usually styled the Lord-Lieutenant, but whose official designation is the Lord-Lieutenant-General and General Governor of Ireland. This high officer is appointed under the Great Seal of the United Kingdom, and bears the sword of state as the symbol of his viceregal authority. He is assisted by a Privy Council, consisting of between fifty and sixty members, who are sworn pursuant to a sign-manual warrant to the Lord-Lieutenant, and are designated right honourable. This body possesses very extensive executive powers,[z] and its sanction is essential to give validity to many of the official acts of the Lord-Lieutenant. The office of the Irish Privy Council, however, as a branch of administration, has been abolished, and its business transferred to the department of the Chief Secretary for Ireland.

The Lord-Lieutenant is commissioned to represent the person of the sovereign in Ireland, to keep the peace, the laws, and customs of that country, to govern the people therein, to chasten and correct offenders, and to encourage such as do well.[a] He is placed in supreme authority, to attend to the impartial administration of justice, and has power to pardon criminals, or to commute their sentences. The police is subject to his entire control. He may issue such orders to the general command-

[y] See Mr. Wynn's speech, in Parl. Deb. (1812) vol. xxi. p. 614.

[z] Earl of Derby, Hans. Deb. vol. clxxxviii. p. 1373.

[a] For curious notes on the administration of the Lord-Lieutenant in the early part of the reign of George III., and on the manner in which the king's business was carried through the Irish Parliament, see Donne, Corresp. Geo. III. vol. i. p. 149; vol. ii. p. 37.

Lord-Lieutenant.

ing the troops in Ireland as are necessary for the support of the civil authority, the protection of the subject, the defence of the realm, and the suppression of insurrection.

The queen reserves for her own signet the grant of money, lands, or pensions (the Lord-Lieutenant recommending such cases to the consideration of the Treasury), and the grant of titles of honour, but not without communication with the Lord-Lieutenant, who may himself confer the distinction of civil knighthood. The queen also appoints the privy councillors, judges, and law officers, governors of forts, and military officers. The Lord-Lieutenant is entrusted with the absolute and complete disposal of the whole patronage of the crown within the Established Church in Ireland, and generally with the disposal of all the other crown patronage of the country.[a] The Lord-Lieutenant also enjoys, by virtue of an ancient prerogative of the crown in Ireland, the right of filling up certain subordinate offices in the superior courts of justice in that country. In England, all such offices are in the gift of the heads of the courts of law. In 1867, an attempt was made to introduce the English practice into Ireland, by inserting a clause in a Bill concerning the Irish Law Courts, which was pending in the House of Lords, to vest the appointment of the officers in question in the chief judge of each court. But the clause was rejected in the House of Commons; and rather than imperil the fate of the Bill, the Lords did not insist upon it.[b] In the distribution of this patronage the Chief Secretary is occasionally consulted.[c]

The terms of the Lord-Lieutenant's commission attest the confidence reposed in him by the imperial government. He has the free gift of all the places left to his disposal. No new office is to be created without his opinion thereon; no appointment which is reserved to

[a] But see Yonge, Life of Lord Liverpool, vol. iii. p. 390.

[b] Hans. Deb. vol. clxxxix. pp. 842, 1602.

[c] *Ibid.* vol. clxxvii. p. 245; *ibid.* vol. clxxxv. p. 1112.

the queen is to be made without his advice and recommendation; and he is required to inform her majesty of every man's merits, that she may bestow marks of favour on such as do well. Her majesty will not admit of any particular complaint of injustice or oppression in Ireland, unless it has been first made to her Lord-Lieutenant; nor will she require him to execute her orders in any business of which he may disapprove, until he can communicate with her majesty and receive further instructions.[d]

Such is the authority of the Lord-Lieutenant of Ireland. As the queen's Viceroy, he is vested with more extensive regal powers than any other subject of her majesty, except, perhaps, the Viceroy of India. Nevertheless, he acts under instructions from the crown, conveyed to him by the ministry for the time being, whose business it is to direct him as to his proceedings, and to animadvert upon his conduct if they see him act improperly, or in a manner detrimental or inconvenient to the public service, or displeasing to the crown.[e] The Cabinet minister who is ordinarily responsible for advising and directing the conduct of the Lord-Lieutenant is the Secretary of State for the Home Department,[f] but in matters of great moment the Prime Minister interposes his authority, or the Cabinet itself is summoned to deliberate and advise upon the instructions to be given him. On matters of revenue, the Lord-Lieutenant is required to correspond with the Treasury, and on all other subjects with the Home Secretary, who keeps him informed of the views and opinions of the Cabinet upon all the more important questions connected with his government.[g]

In 1828 the Marquis of Anglesey, then Lord-Lieutenant, pursued a line of conduct towards the leaders of the Irish Roman Catholic party, calculated to embarrass the home government, and to augment the difficulties they experienced in administering affairs in Ireland.

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[d] Murray's Handbook, pp. 273, 274. Mirror of Parl. 1829, p. 802.

[e] The Duke of Wellington, in Mirror of Parl. 1829, p. 1402.

[f] Hans. Deb. vol. clxxxv. p. 1120.

[g] Dodd's Manual, p. 307. Murray's Handbook, p. 275.

Lord-Lieutenant.

These proceedings led to a remonstrance from the Prime Minister (the Duke of Wellington) and to the ultimate recall of the marquis. He, however, feeling himself to be the aggrieved party, obtained the king's permission to read, in his place in Parliament, the entire correspondence between himself and his colleagues in the administration, in vindication of his policy and conduct whilst at the head of the Irish government. He did so, upon a formal motion for papers, in order to obtain an expression of 'their lordships' opinion of his conduct.' The motion was resisted by the Duke of Wellington, who, while he went into details to justify the conduct pursued towards the noble marquis, asserted that 'Parliament had no business to interfere with regard to the dismissal of any of his majesty's servants from the government of the country, except in cases in which some material public injury has been thereby occasioned, or some considerable inconvenience has been felt, or except in cases where Parliament has found it necessary to interfere to obtain a change of government.'[h] This explanation was accepted by the House; the formal motion for papers was negatived, and no further proceedings had in the matter.

The Lord-Lieutenant of Ireland is always chosen from amongst the peerage; nevertheless, his presence in the House of Lords, when any motion is about to be submitted respecting his conduct in office, is not necessary, as the ministers of the crown are responsible for his acts, and are there to answer for him.[i] Sometimes, however, the Lord-Lieutenant appears in his place in the House of Lords to justify and explain his conduct,[j] but this is of his own free will.

The Lord-Lieutenant maintains an establishment of a regal character, holds courts, levées, and drawing-rooms, and is attended by a household for the support of which he receives an extra allowance of between 3,000*l.* and 4,000*l.*, besides his annual salary of 20,000*l.*[k] He is also allowed two residences, one in Dublin Castle, the other in Phœnix Park. In thus upholding and representing the

[h] Mirror of Parl. 1829, p. 1401.
[i] *Ibid.* 1831–2, p. 159.
[j] Hans. Deb. vol. clviii. p. 1643.
[k] The salary is fixed by the Act 2 & 3 Will. IV. c. 116, and is paid out of the Consolidated Fund. The sum of 3,630*l.* 9*s.* 11*d.* is voted annually in Committee of Supply to pay the salaries of the officers of the vice-regal household; Civil Service Estimates, 1868–9, Class II. No. 7.

dignity of the crown, he is assisted by his wife, who performs such regal duties as would appertain to the position of a queen consort, and on all occasions takes precedence of every other lady in Ireland during the viceroyalty.[l]

The Lord-Lieutenant of Ireland, being by direct delegation a viceroy of the British crown, must necessarily be a Protestant. Since the office of Lord Chancellor of Ireland has been thrown open to Roman Catholics, this is the sole remaining office in Ireland that must be filled by a person 'who is of the same religious persuasion, and bound to maintain the same religious principles, as the occupant of the throne itself.'[m]

The question of abolishing the viceregal government of Ireland, and transferring its duties to an additional Secretary of State to be appointed for that country, has been agitated from time to time. In June, 1850, a project to this effect was formally submitted by the government to the consideration of Parliament, as being calculated to simplify and improve the administration of Irish affairs; but it did not meet with the approval of experienced statesmen, or receive the sanction of the legislature. Similar propositions have been made since then, but they have not been favourably entertained by the House of Commons.[n]

The Lord-Lieutenant is assisted in carrying on the executive government of Ireland mainly by four persons: the Chief Secretary, the Lord Chancellor, the Attorney-General—each of whom is a member of the Irish Privy Council—and the permanent Under-Secretary.[o]

Chief Secretary.

The *Chief Secretary* to the Lord-Lieutenant, or, as he is otherwise styled, Chief Secretary for Ireland, is an

[l] Dodd's Manual, p. 308.

[m] Earl of Derby, Hans. Deb. vol. clxxxviii. p. 1373. Act 30 & 31 Vict. c. 75.

[n] See Commons' Debates, July 7, 1857, March 25, 1858. But see a singular statement by Mr. Bernal Osborne in the House on August 2, 1866, showing the growth of opinion in favour of the abolition of the viceregal office: Hans. Deb. vol. clxxxiv. p. 1966.

[o] Hans. Deb. vol. cxc. pp. 1358, 1434. Thom, Irish Directory, 1868, p. 887.

Secretary for Ireland.

officer of more importance in the administration of the Irish government than might at first be supposed from his official designation. When there was a local parliament in Ireland, the relation of the Chief Secretary towards the Lord-Lieutenant was more strictly constitutional and less anomalous than it is now. He then stood in a subordinate capacity; all he did emanated from the authority of the Lord-Lieutenant, and his relation to him corresponded in all material respects to that in which a minister of state ordinarily stands with reference to the crown. But since the union the relative position and influence of these two functionaries have been materially changed.[p] The Chief Secretary is now strictly the 'prime minister' of the Lord-Lieutenant; he exercises, in point of fact, many of the viceregal functions. He is a minister responsible to Parliament for every act of the Irish administration.[q] He necessarily possesses great power, which he is sometimes called upon to exercise without communication with his chief, however desirous he might be of doing nothing without consulting him.[r] The Chief Secretary is invariably a Privy Councillor, and generally a member of the House of Commons, representing the Irish Government therein. He is also occasionally a Cabinet minister; but, in the opinion of Sir Robert Peel, grave objections exist to this dignity being conferred upon him, inasmuch as it not only disturbs the relations of a chief to his subordinate (the Lord-Lieutenant never being included among the Cabinet Councillors), but directly inverts those relations, and encourages the Chief Secretary still more to assume for himself the exercise of independent powers.[s] It is calculated, moreover, to interfere with the direct and acknowledged responsibility of the Home Secretary for the acts of the Irish Government.

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[p] See Mahon's Hist. of England, vol. iv. p. 190.

[q] Hans. Deb. vol. clxxxv. p. 1113.

[r] *Ibid.* vol. cxi. p. 1409.

[s] *Ibid.*; and see Hans. Deb. vol. clxiii. pp. 1460, 1473.

The duties of the Chief Secretary are to see that the commands of the Lord-Lieutenant, in keeping the peace, the laws, and the customs of Ireland, are fulfilled. On revenue matters he corresponds with the Treasury, but on other subjects with the Secretary of State for the Home Department. He also acts as keeper of the privy seal of Ireland.

The Chief Secretary is unavoidably absent for a great portion of the year, attending his parliamentary duties in London, and engaged at other times with parliamentary and political business. His salary was formerly 7,000*l.* a year, but was fixed in 1831, and again in 1851, at 5,500*l.* per annum, in lieu of all fees and emoluments. It has since been reduced to 4,000*l.*, but he has an extra allowance of 425*l.* 'for fuel.'[t]

This salary, though double in amount to that assigned to an Under-Secretary of State, is given because the Irish Secretary is exposed to much additional expense by being obliged to reside partly in London and partly in Dublin, and to entertain largely when at the viceregal capital. He has an official residence in the Phœnix Park.

Under-Secretary.

There is a permanent Under-Secretary, whose duties are exceedingly various and important, and who is practically the working head of the Irish establishment, at Dublin Castle.[u]

Law officers.

There is also a Lord Chancellor,[v] an Attorney-General, and a Solicitor-General for Ireland, whose duties resemble those of the similar appointments in England. The two latter are eligible to sit in the House of Commons, though it rarely happens that both of them can obtain seats

Lords of the Treasury.

[t] Hans. Deb. vol. clxiv. p. 636. Civil Service Estimates, 1868-9, Class II. No. 8.

[u] See Commons Papers, 1854, vol. xxvii. pp. 99–102, 121, 155. M'Lennan's Life of Thomas Drummond, Ex-Under Secretary, pp. 250–254. Earl of Mayo, in Hans. Deb. vol. cxc. p. 1358.

[v] For his duties, see Hans. Deb. vol. clxxxv. p. 1113, and vol. clxxxvii. p. 1372. The present Lord Chancellor is a Roman-Catholic; being the first appointment of one of that faith to the office since the Revolution of 1688; see *ante*, p. 719; Law Times, Jan. 16, 1869, p. 211.

therein. One of the Lords of the Treasury, we have seen, is specially charged with the transaction of Irish business,[w] and is selected from amongst the members of Parliament representing Irish constituencies, or from amongst individuals likely to be able to obtain a seat for some place in Ireland. These officers—viz. the Lord Chancellor, the Attorney and Solicitor-General, and one of the Lords of the Treasury—together with the Lord-Lieutenant and the Chief Secretary, constitute the members of the administration on behalf of Ireland, and all vacate their offices upon a change of government.

Ministers for Ireland.

From the union until Lord Normanby's administration in 1835, the Irish law officers were not invariably changed with the government, and were neither obliged nor expected to enter the House of Commons. Their position was non-political unless they entered Parliament, when they were required to support the government or resign.[x] But since 1835 the system of having an exclusively party official bar has prevailed in Ireland; the law officers of the crown retire with the ministry, and when appointed to office they must endeavour to get a seat in Parliament, though their inability to find a constituency does not necessitate their resignation of office.[y]

Officers of the household.

The only remaining persons who are considered as forming part of the administration, and who consequently vacate their offices on a change of ministry, are the chief officers of the royal household. They may be enumerated as follows:[z]—

The Lord Steward of the Household.
The Lord Chamberlain and the Vice-Chamberlain.
The Master of the Horse.[a]

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[w] See *ante*, p. 450.

[x] M'Lennan, Memoir of Thomas Drummond, p. 252 *n.* Fraser's Magazine, vol. lxxv. p. 822. Edin. Rev. vol. cxxvi. p. 163.

[y] See *ante*, p. 235.

[z] Dodd's Manual, p. 311. List prefixed to vol. cxc. of Hansard's Debates.

[a] It is the duty of the Master of the Horse to regulate the conditions under which 'the Queen's Plates,'

The Treasurer and the Comptroller of the Household.
The Captain of the Corps of Gentlemen-at-Arms.
The Captain of the Yeomen of the Guard.
The Master of the Buckhounds.
The Chief Equerry and Clerk Marshal.
The Lords in Waiting.[b]

These dignified offices are for the most part usually held by peers or members of the House of Commons; and therefore, as well as from the influence the incumbents thereof would naturally exercise upon the royal mind, from their close proximity to the person of the sovereign, it is reasonable that they should be held by political adherents of the existing ministry. Since 1841, it has also been admitted that the offices of Mistress of the Robes and of Ladies of the Bedchamber, when held by ladies connected with the outgoing ministers, should be considered at the disposal of the new Cabinet. But Ladies of the Bedchamber belonging to families whose political connection has been less pronounced, have been suffered to remain in the household, without objection, on a change of ministry.[c]

For particulars concerning the original functions and present duties of these officers of the royal household, see Murray's 'Handbook' and Dodd's 'Manual of Dignities;' and in regard to the office of Lord Chamberlain, which was originally one of very great importance, see Sir H. Nicolas' 'Proceedings of the Privy Council,' vol. vi. pp. ccxix.–ccxxviii.

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voted by Parliament, with a view to promote improvement in the breed of horses, shall be run for.—Hans. Deb. vol. cxciii. pp. 1208, 1485.

[b] The new Gladstone ministry propose to affiliate the Lords in Waiting, being peers, to certain public offices which are not otherwise represented in the House of Lords, in order to effect a more efficient representation of the public service in that chamber.

[c] See *ante*, vol. i. p. 191.

CHAPTER VI.

THE JUDGES IN RELATION TO THE CROWN AND TO PARLIAMENT.

THE administration of justice, freely and indifferently, to all people, of whatsoever degree, is of the highest importance to the wellbeing of a commonwealth.

By the constitution of this kingdom, the sovereign is regarded as the dispenser of justice; but the exercise of this prerogative is regulated and restrained by law. Thus, the king is debarred from adjudicating upon any matter except through the instrumentality of persons duly appointed to that end.[a] The courts of law, originally created for the purpose of hearing and determining actions and suits, must proceed according as the law directs. And the crown cannot of itself establish any new court, or change the jurisdiction or procedure of an existing court, or alter the number of the judges, the mode of their appointment, or the tenure of their office. For all such purposes the co-operation of Parliament is necessary.[b]

It is, moreover, one of the principal duties and functions of Parliament 'to be observant of the courts of justice, and to take due care that none of them, from the lowest to the highest, shall pursue new courses unknown to the laws and constitution of this kingdom, or to equity, sound legal policy, or substantial justice.'[c]

Nevertheless, the integrity and independence of the judicial office are amply secured from encroachment either by the crown, the courts, or the people. From

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[a] See *ante*, vol. i. p. 173.

[b] *Ibid.* p. 352. Hearn, Govt. of Eng. p. 74.

[c] Burke, quoted *ante*, vol. i. p. 353.

the reign of Edward III., any interference on the part of the crown with the due course of justice has been declared to be illegal;[d] it is a principle of law that no action will lie against a judge of one of the superior courts for a judicial act, even though it be alleged to have been done maliciously and corruptly;[e] and constitutional usage forbids either House of Parliament from entertaining any question which comes within the jurisdiction of a court of law to determine; or from instituting investigations into the conduct of the judiciary, except in extreme cases of gross misconduct or perversion of the law, that may require the interposition of Parliament in order to obtain the removal of a corrupt or incompetent judge.[f] Judicial independence.

All judges are sworn well and truly to serve the queen and her people in their several offices, and to 'do equal law and execution of right to all the queen's subjects, rich and poor, without having regard to any person.'[g] But in the event of a judge, either wilfully or through ignorance, violating his oath, or otherwise misconducting himself in the judicial office, the constitution has provided an adequate remedy, and a method of depriving him of his judicial functions.

Previous to the revolution of 1688, the judges of the superior courts, as a general rule, held their offices at the will and pleasure of the crown. Under this tenure there were frequent instances, from time to time, of venal, corrupt, or oppressive conduct on the part of judges, and of arbitrary conduct—in the displacement of upright judges, and conniving at the proceedings of dishonest judges—on the part of the crown, the which gave rise to serious complaints, and led to several attempts, during the seventeenth century, to limit the discretion of the crown in Tenure of office.

[d] Hearn, p. 79.

[e] Broom, Constitutional Law, pp. 763–772.—Except for the refusal of a Writ of Habeas Corpus, under the Act 31 Car. II. c. 2, sec. 7, or, for the refusal of a Bill of Exception; Hearn, p. 137.

[f] *Ante*, vol. i. p. 355.

[g] Report of Oaths Commission, 1867, pp. 42–45.

regard to appointments to the Bench.[h] At length, by the Act of Settlement, passed in the year 1700, it was provided, that after the accession of the house of Hanover to the throne of England, 'judges' commissions be made *quamdiu se bene gesserint*, and their salaries ascertained and established; but, upon the address of both Houses of Parliament, it may be lawful to remove them.'[i]

Removable upon a Parliamentary address.

One step only remained to place the judges in a position of complete independence of the reigning sovereign, and that was to exempt them from the rule, ordinarily applicable to all office-holders, whereby their commissions should be vacated upon the demise of the crown. It is very doubtful whether this rule applied to the judges after they began to be appointed 'during good behaviour,'[j] but it was deemed expedient to place the matter beyond dispute. Accordingly, one of the first public acts of George III., upon his accession to the throne, was to recommend to Parliament the removal of this limitation. The suggestion was adopted by the passing of an Act which declared that the Commissions of the Judges shall remain in force, during their good behaviour, notwithstanding the demise of the crown: 'Provided always that it may be lawful for his Majesty, his heirs, &c. to remove any Judge or Judges upon the address of both Houses of Parliament.' It was further provided that the amount of the judges' salaries now or hereafter to be allowed by any Act of Parliament should be made a permanent charge upon the Civil List.[k] By various subsequent statutes, the judges' salaries are now made payable out of the Consolidated Fund,[l] which removes them still more effectually from the uncertainty attendant upon an annual vote in Committee of Supply.[m]

Before entering upon an examination of the parlia-

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[h] Hearn, pp. 80, 85. Atkinson, Papinian, p. 121.

[i] 12 & 13 Will. III. c. 2.

[j] Campbell, Lives of the Chancellors, vol. v. p. 148.

[k] 1 Geo. III. c. 23.

[l] Commons Papers, 1865, vol. xxx. p. 50.

[m] See *ante*, vol. i. p. 472.

mentary method of procedure for the removal of a judge under the Act of Settlement, it will be necessary to enquire into the precise legal effect of their tenure of office 'during good behaviour,' and the remedy already existing, and which may be resorted to by the crown, in the event of misbehaviour on the part of those who hold office by this tenure.

Forfeiture of their offices for misbehaviour.

In an elaborate opinion of the crown law officers of the colony of Victoria, delivered in 1864,[n] the doctrine on this subject was explained as follows:—'The legal effect of the grant of an office during "good behaviour" is the creation of an estate for life in the office.[o] Such an estate, however, is conditional upon the good behaviour of the grantee, and like any other conditional estate may be forfeited by a breach of the condition annexed to it; that is to say, by misbehaviour. Behaviour means behaviour in the grantee's official capacity.[p] Misbehaviour includes, firstly, the improper exercise of judicial functions; secondly, wilful neglect of duty, or non-attendance;[q] and, thirdly, a conviction for any infamous offence, by which, although it be not connected with the duties of his office, the offender is rendered unfit to exercise any office or public franchise.[r] In the case of official misconduct, the decision of the question whether there be misbehaviour, rests with the grantor, subject, of course, to any proceedings on the part of the removed officer. In the case of misconduct outside the duties of his office, the misbehaviour must be established by a previous conviction by a jury.[s] When the office is granted for life, by letters patent, the forfeiture must be enforced by a *scire facias*.[t] These principles apply to all offices, whether judicial or ministerial, that are held during good behaviour.'[u]

[n] See Return to an Order of the Leg. Assembly of Victoria (Australia) of 9 December, 1864, for Correspondence respecting the Rights and Privileges of the Judges. Votes and Proceedings Leg. Assy. Victoria, 1864–5; C. No. 2, pp. 10, 11.

[o] Co. Lit. 42.

[p] 4 Inst. 117.

[q] 9 Reports, 50.

[r] Rex *v.* Richardson, 1 Burrow, 539.

[s] *Ibid.*

[t] Com. Digest *Officer*, (K. 11).

[u] 4 Inst. 117.

The legal accuracy of the foregoing definitions of the circumstances under which a patent office may be revoked is confirmed by an opinion of the English crown law officers (Sir William Atherton and Sir Roundell Palmer) communicated to the Imperial government in 1862, wherein it is stated, in reference to the kind of misbehaviour by a judge that 'would be a legal breach of the conditions on which the office is held,' that 'when a public office is held during good behaviour, a power [of removal for misbehaviour] must exist somewhere; and when it is put in force, the tenure of the office is not thereby abridged, but it is forfeited and declared vacant for non-performance of the condition on which it was originally conferred.'[v] To the same effect, Mr. (afterwards Lord Chief Justice) Denman, stated at the bar of the House of Commons, when appearing as counsel on behalf of Sir Jonah Barrington,[w] that independently of a parliamentary address or impeachment for the removal of a judge, there were two other courses open for such a purpose. 'These were (1) a writ of *scire facias* to repeal the patent by which the office had been conferred; and (2) a criminal information [in the Court of King's Bench] at the suit of the Attorney-General. By the latter of these, especially, the case might speedily be decided.'[x] Elsewhere, the peculiar circumstances under which each of the courses above enumerated would be specially applicable have been thus explained: 'First, in cases of misconduct not extending to a legal misdemeanour, the

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[v] Cited in Votes and Proceedings, Leg. Assembly, Victoria, Second Session 1866, vol. i. C. No. 8.

[w] See *post*, p. 736.

[x] Mirror of Parlt. 1830, p. 1897. Foster on the Writ of *Scire Facias*. Book 3, ch. 2.—For a recent decision as to the circumstances under which a writ of *Scire Facias* may be issued; see Moore, P.C. cases; N. S., vol. iii. p. 439. On November 23, 1805, the hon. Robert Johnson, one of the judges of the Court of Common Pleas in Ireland, was convicted by the Court of King's Bench, England, of a libel upon the Lord Lieutenant of Ireland, and others (Howell's State Trials, vol. xxix. pp. 81–502; and see Parl. Deb. vol. v. pp. 557, 622). After his conviction, the judge was permitted to effect a compromise, and resign his office; Mirror of Parlt. 1830, p. 1897.

appropriate course appears to be by *scire facias* to repeal his patent, "good behaviour" being the condition precedent of the judges' tenure; secondly, when the conduct amounts to what a court might consider a misdemeanour, then by information; thirdly, if it amounts to actual crime, then by impeachment; fourthly, and *in all cases*,' at the discretion of Parliament, 'by the joint exercise of the inquisitorial and judicial jurisdiction' conferred upon both Houses by statute, when they proceed to consider of the expediency of addressing the crown for the removal of a judge.[y]

By these authorities it is evident the crown is duly empowered to institute legal proceedings against the grantee of a judicial or other office held during 'good behaviour' for the forfeiture of such office on proof of 'misbehaviour' therein.

Action of Parliament for removal of a judge.

But, in addition to these methods of procedure, the constitution has appropriately conferred upon the two Houses of Parliament—in the exercise of that superintendence over the proceedings of the courts of justice which is one of their most important functions—a right to appeal to the crown for the removal of a judge who has, in their opinion, proved himself unfit for the proper exercise of his judicial office. This power is not, in a strict sense, judicial; it may be invoked upon occasions when the misbehaviour complained of would not constitute a legal breach of the conditions on which the office is held. The liability to this kind of removal is, in fact, a qualification of, or exception from, the words creating a tenure during good behaviour, and not an incident or legal consequence thereof.

In entering upon an investigation of this kind, Parliament is limited by no restraints, except such as may be

[y] Lords' Journals, vol. lxii. p. 602. —It must also be remembered that whatever immunity may attach to the judges for acts done judicially, in respect of all wrongful acts done in their private capacity they are amenable to the laws. See Broom, Const. Law, pp. 765, 791.

When justifiable.

self-imposed. Nevertheless, the importance to the interests of the commonwealth, of preserving the independence of the judges, should forbid either House from entertaining an application of this description, unless such grave misconduct were imputed to a judge as would warrant, or rather compel the concurrence of both Houses in an address to the crown for his removal from the bench. 'Anything short of this might properly be left to public opinion, which holds a salutary check over judicial conduct, and over the conduct of public functionaries of all kinds, which it might not be convenient to make the subject of parliamentary enquiry.'[z]

Bearing this in mind, the House of Commons, to whom it peculiarly belongs to take the initiative in such matters, should remember the words once addressed to them by Edmund Burke: 'We may, when we see cause of complaint, administer a remedy; it is in our choice by an address to remove an improper judge; by impeachment[a] before the Peers to pursue to destruction a corrupt judge; or, by Bill, to assert, to explain, to enforce, or to reform the law, just as the occasion and necessity of the case shall guide us. We stand in a situation very honourable to ourselves and very useful to our country, if we do not abuse or abandon the trust that is placed in us.'[b]

Judge Fox.

The first case wherein the interposition of Parliament was invoked for the removal of a judge, under the provisions of the Act of Settlement, occurred in 1805, in reference to Mr. Justice Fox, of the Irish Bench. After a protracted investigation, however, the prosecution was abandoned, on the ground that the proceeding, which had originated in the House of Lords, should have been commenced in the House of Commons. But the case is

[z] Attorney-General Pollock, Hans. Deb. vol. lxvi. p. 1090.

[a] As in the case of Lord Bacon, in 1620 (2 St. Trials, 1087), and Lord Chancellor Macclesfield, in 1725 (16 St. Trials, 767).—The procedure upon an impeachment by the House of Commons is described in detail in the 23rd chapter of Sir Erskine May's treatise on the Usages of Parliament.

[b] Burke's Speeches, vol. i. p. 80.

deserving of a careful study, as, notwithstanding the omission in the statutes of any directions as to the way in which such investigations should be conducted—an omission which led at the outset to considerable difficulty in arranging the course of procedure—there was, and ever has been, a manifest determination, on the part of the House of Lords, to be governed upon such occasions by the established principles of justice in the trial of criminal charges.

Case of Judge Fox.

Mr. Fox was a Judge of the Court of Common Pleas in Ireland. On May 31, 1804, a petition was presented to the House of Lords, complaining of his judicial conduct upon various occasions; which was followed by a petition from the Judge himself, that he might be duly informed of the charges preferred against him, and be permitted to answer by himself and counsel in his own defence. Whereupon a copy of the petition of complaint was ordered to be communicated to the Judge.[c] On July 5, articles of complaint, founded in part upon the said petition, were presented to the House of Lords by a peer, ordered to lie on the table, and a copy thereof to be furnished to Mr. Justice Fox.[d] But the articles were not proceeded upon, as soon afterwards Parliament was prorogued.

Early in the ensuing Session, on January 21, 1805, three petitions were presented against Judge Fox, together with new and amended articles of complaint, which the House resolved to consider in a committee of the whole.[e] Upon the order being read for the House to resolve itself into this committee, it was agreed to appoint a select committee to consider of the matter alleged against the Judge, and of the evidence which might be brought in support of the same.[f] But neither the Judge, nor any person on his behalf, was allowed to be present at the meetings of this committee,[g] the proceedings of which were, after a time, ordered to be discontinued by the House, and the matters of complaint against Mr. Justice Fox to be examined into in a committee of the whole House, 'with a view to consider of an address to the king to remove' the said Judge, 'if a sufficient ground for such address shall be substantiated by proof before this House.'[h] Accordingly, on May 22, the House agreed to resolve

[c] Lords' Journals, vol. xliv. pp. 558, 619.

[d] Parl. Debates, vol. ii. p. 950.—The Lords' entry of this proceeding was afterwards ordered to be expunged from the Journal. See Lords' Jls. vol. xliv. p. 647, vol. xlv. p. 181.

[e] Parl. Deb. vol. iii. pp. 22, 46.

[f] Lords' Jls. vol. xlv. p. 21.

[g] Parl. Deb. vol. vii. p. 754.

[h] Lords' Journals, vol. xlv. p. 181. On June 7, upon petition of Judge Fox, that he might have access to the orders, proceedings, and evidence

itself into a committee of the whole, to consider of a motion for an address to the king, representing various instances wherein Mr. Justice Fox had misconducted himself in the exercise of his judicial functions, 'and for these reasons praying that his majesty will be graciously pleased to remove the said Luke Fox from his said office,' and to enquire into the facts alleged in the said motion. The petitions of complaint were referred to this committee, and leave given to the petitioners to be heard by counsel in support of the same. Leave was also given to Mr. Fox to be present, and to be heard by himself or counsel, against the motion; copies of which, and of the petitions, were ordered to be communicated to him.[i] After some deliberation as to the place in which Mr. Fox should be heard, it was ordered that he should be accommodated with a chair below the bar.[j] The enquiry at the bar was then commenced, and continued from time to time until the close of the session, when the case on behalf of the petitioners was still unfinished. A Bill was accordingly introduced, which received the royal assent, to continue the proceedings in the House of Lords upon this matter, notwithstanding any prorogation or dissolution of Parliament.[k]

On February 24, 1806, a day was appointed by the House of Lords for resuming the enquiry into the case of Mr. Justice Fox; but the order of the day was read and postponed again and again, without anything being done. At length, on June 3, Judge Fox petitioned the House, complaining of being subjected to a protracted and costly investigation, extending over three sessions of Parliament, and reflecting upon his good name and usefulness. This petition was taken into consideration on June 19, when Lord Grenville (the Prime Minister) moved that further proceedings in the matter of complaint against Mr. Fox be postponed for two months (*i.e.* to a period beyond the session), urging, on behalf of this motion, that the proceedings had been wrong from the beginning, in having originated in the Lords instead of in the Commons. It being an undeniable law of Parliament that, except for the maintenance of its own privileges, 'no criminal complaint can be preferred and proceeded upon in this House,' originally. 'The House of Commons is the grand inquest of the high court of Parliament, and it is competent for them alone to bring commoners before your lordships for high crimes and misdemeanors. Even in the case of Peers, the inquest is preferred elsewhere, and the Bill is removed to your lordships' House, in order that you may proceed.' Were the proposed

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taken by the select committee, it was ordered to be revived, and to report forthwith the evidence to the House. *Ibid.* p. 246. The report was made on June 10, and was directed to be printed for the use of members. *Ibid.* pp. 253–295.

[i] *Ibid.* pp. 203, 204.

[j] *Ibid.* pp. 208, 219, 223.

[k] 45 Geo. III. c. 117.

address persevered in, it would still require the concurrence of the Commons to give it force and effect. The House of Commons, when the case came before them, might think fit to regard it in a different aspect, and might constitutionally resolve that the charges against Mr. Justice Fox ought to be proceeded upon by way of impeachment at the bar of the House of Lords, instead of by the more lenient method of an address for his removal from office. 'Then,' said Lord Grenville, 'see in what a situation we stand. Every one of your lordships would be liable to be challenged upon the mere fact that you had already decided.' 'It has been said, that unless you admit the power of the House of Lords, there is no clause in the Act by which you can give effect to the clauses for the removal of the judges.' But, 'there are many other cases, with regard to which matters may arise for the discretion of the House, without the necessity of your lordships deciding originally.' For example, where a judge had been convicted elsewhere of an offence, 'it might be a proper exercise of your lordships' functions to say, that although such conviction was not for a misdemeanor that induced the forfeiture of office, yet it rendered him unfit to be continued in the exercise of the judicial functions, ... and a fit object for the discretionary exercise of the power of this House to advise his removal.' While it would be well to satisfy every clause in an Act of Parliament, 'yet I would wish that some should remain unsatisfied rather than you should assume a jurisdiction so inconvenient to exercise, and so perilous to the subjects of this realm.' At the close of the debate Lord Grenville's motion was agreed to, on a division, and thus the proceedings against Judge Fox came to an end.[1] No further proceedings against the Judge were instituted in either House of Parliament, and he remained upon the bench until July 23, 1816, when he resigned his office.[m]

Case of Baron McCleland.

On June 2, 1819, a member of the House of Commons, in his place, presented an article of charge of certain crimes and misdemeanors against the Hon. James McCleland, one of the Barons of the Court of Exchequer in Ireland, which was delivered in at the table of the House and read. He then moved that, on that day fortnight, the House would resolve itself into a committee of the whole, to take the said article into consideration. Lord Castlereagh (the Foreign Secretary) denied that 'there was any rational ground to impute such corruption to Baron McCleland as to justify the

[1] Parl. Deb. vol. vii. pp. 226, 506, 516, 752-772.—See a protest signed by Lords Abercorn, Eldon, and others, against the abrupt termination of those proceedings, and disputing the validity of the reasons upon which the House acted; *ibid.* p. 788.

[m] Haydn, Book of Dignities, p. 455; and see Wright's History of Ireland, vol. iii. p. 323.

enquiry;' and after a short debate the motion was withdrawn; and it was resolved that the said Article of Charge be rejected.[n]

Case of Chief Baron O'Grady.

In 1821 Chief Baron Standish O'Grady, of the Irish Court of Exchequer, was accused by the Commissioners on the Courts of Justice in Ireland, in their ninth and eleventh reports, with having unjustly and arbitrarily increased his own fees.[o] The charge was investigated by two select committees of the House of Commons, by whom the accusation was confirmed.[p] Their reports were communicated by the government to the Commissioners, who again examined the Chief Baron and other witnesses in relation thereto, and made known to the government the result of this further investigation. Finally, the several reports of the Commissioners were referred to a committee of the whole House, who reported a series of resolutions, explanatory of the allegations against the Chief Baron, which were agreed to by the House. Whereupon it was resolved, after much debate, and the rejection of some amendments exculpatory of the Chief Baron: (1) That the receipt of fees by judges in the Courts of Common Law and Exchequer has been recently abolished by law. (2) That this House, under all the circumstances above stated, does not deem it necessary to adopt any further proceedings in the case of the Chief Baron O'Grady.[q]

Case of Judge Kenrick.

On June 14, 1825, a petition from one Canfor was presented to the House of Commons, complaining of the conduct of William Kenrick, Esq., one of the Justices of the Peace in the county of Surrey, under certain circumstances therein detailed, which it was alleged amounted to 'a denial of justice' in a particular case, 'by which a charge of felony was suppressed and defeated.' Mr. Kenrick was also a Judge of Great Sessions in Wales, an office since abolished, but which at this time ranked, both as regarded jurisdiction and tenure, with that of a Judge of the Court of King's Bench in England.[r] Canfor's petition was ordered to lie upon the table and to be printed; and copies of certain affidavits in the case ordered to be laid before the House.[s] On June 21, the foregoing petition was read, and ordered to be taken into consideration on a future day, the petition and order to be communicated to Mr. Kenrick; and the petitioner and Mr. Kenrick, by himself or counsel, ordered to attend the House on the day mentioned.[t] At the time appointed, the petition was considered in a committee of the whole House, wherein

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[n] Com. Journals, vol. lxxiv. p. 493. Parl. Deb. vol. xi. pp. 850–854.

[o] Com. Journals, vol. lxxvi. p. 432; vol. lxxviii. p. 135.

[p] *Ibid.* vol. lxxvi. p. 499; vol. lxxviii. p. 321.

[q] *Ibid.* vol. lxxviii. pp. 467, 470.

[r] See Parl. Deb. N. S. vol. xiv. p. 659; 11 Geo. IV. and 1 Will. IV. c. 70, sec. 14.

[s] Com. Journals, vol. lxxx. p. 536. Parl. Deb. N. S. vol. xiii. p. 1138.

[t] Com. Journ. vol. lxxx. p. 582.

several witnesses were examined, and the evidence taken ordered to be printed by the House.[u] On the same day a petition was received from Mr. Kenrick, setting forth certain statements in his own defence, submitting his conduct to the favourable consideration of the House, and praying that justice might be done him in the premises; which petition was ordered to lie upon the table, and be printed.[v] On June 28, Mr. Kenrick again petitioned the House for time to enable him to prepare instructions for his counsel, and to obtain counsel to cross-examine the witnesses in this enquiry; the House immediately resumed their investigation of the case, in committee of the whole, when a resolution was reported, that the committee did not think it necessary to recommend any further proceedings with reference to the petition of Caufor.[w] The enquiry into this case proceeded (as was afterwards stated) on the ground that if it could be proved that Mr. Kenrick had acted improperly in his character of justice of the peace it ought to be considered as unfitting him to fill the higher office of a judge.[x]

Meanwhile, on the same day, and before the House went into committee, a member in his place charged William Kenrick, Esq., one of his majesty's Justices of Great Session in Wales, a Justice of the Peace for Surrey, and Recorder of Dover, with another offence, viz.: That he preferred before a neighbouring magistrate a charge of felony against a poor man named Franks, without any sufficient proof; and that he had otherwise misconducted himself in regard to this matter. It was then ordered, that a copy of this charge be communicated to Mr. Kenrick.[y] The transaction complained of in this case referred solely to Mr. Kenrick as a private individual, and, if in fault, he was answerable for the same to the ordinary legal tribunals.[z] Nevertheless, early in the ensuing session, on February 14, 1826, the House was moved for the reading of the Journal of June 27, 1825, relative to the charge against Mr. Kenrick, in the case of Franks, and resolved to consider the said charge in committee of the whole on a future day, giving leave to Mr. Kenrick to attend by himself, his counsel, or agents, and ordering a copy of the charge to be communicated to him.[a] On February 17, this committee sat, examined several witnesses, and reported the minutes of evidence to the House, which were ordered to be printed, and to be taken into consideration on Tuesday next; Mr. Kenrick, &c., having leave to attend.[b] On the day appointed, after consideration of the case,

[u] Com. Journ. vol. lxxx. p. 600.
[v] *Ibid.* p. 602.
[w] *Ibid.* p. 612; see Parl. Deb. N. S. vol. xiii. pp. 1425–1433.
[x] *Ibid.* vol. xiv. p. 511.
[y] Com. Journ. vol. lxxx. p. 607.
[z] Parl. Deb. N. S. vol. xiv. p. 511.
[a] Com. Journ. vol. lxxxi. p. 44.
[b] *Ibid.* p. 76.—On this occasion, the Speaker advised the House, in detail, as to the course of procedure in committee of the whole, and upon the report, see Parl. Deb. N. S. vol. xiv. pp. 500–502.

it was moved to resolve: that the charge against W. Kenrick, Esq., one of his majesty's Justices of Great Sessions in Wales, has been fully established by evidence, except so far as it imputes to him that he applied for leave to withdraw his prosecution against J. Franks, on account of his good character; but the motion was opposed by the Attorney-General on the ground that it was not proved, and it was negatived without a division.[c]

Case of Sir Jonah Barrington.

The next case of this kind which engaged the attention of Parliament was that of Sir Jonah Barrington. It is memorable as being the first instance wherein an address for the removal of a judge received the sanction of both Houses, and the compliance of the crown.

On May 20, 1828, the House of Commons addressed the crown with a request that the Commissioners of Judicial Enquiry in Ireland might be directed to enquire into the state of the Admiralty Court thereof, which was presided over by Sir Jonah Barrington.[d] Directions were given accordingly. In the following session a report of the said Commissioners on the conduct of Sir Jonah Barrington, with other documents, including a deposition from Judge Barrington in vindication of his conduct, were laid before the House, and referred to a select committee to report their observations on the accusations preferred and the defence made.[e] This committee, without assuming the right of summoning Sir Jonah to appear before them, understanding that he was desirous of being examined, notified him of their appointment, and permitted him to attend and give evidence, as well as to state the persons whose evidence he desired might be taken in his own behalf. After a full investigation, the committee reported their opinion that the Judge had been guilty of malversation in office on certain specified occasions; leaving it to the House to determine the expediency of addressing the crown for his removal from the bench.[f] On March 18, 1830, the several reports aforesaid, with the Judge's deposition, were read, and the House resolved to go into committee to consider of the same on a future day named. This day was fixed for about six weeks hence, so as to give Sir Jonah Barrington sufficient time to enable him to shape his defence.[g] On May 6 the House went into committee, when the members in charge of this case moved a series of resolutions, setting forth the grounds of complaint against Sir

[c] Parl. Deb. NS., vol. xiv. pp. 670–678.
[d] Mirror of Parlt. 1828, p. 1577.
[e] *Ibid.* 1829, p. 1153.
[f] Commons Papers, 1829, vol. iv. p. 10; Mirror of Parlt. 1829, p. 1921; Speech of Mr. Wynn, chairman of the select committee, *ibid.* 1830, p. 1809.
[g] *Ibid.* 1830, p. 865.

Jonah for his misconduct and malversation in office, and declaring it to be the opinion of the committee that he was unfit to continue to hold the office of Judge of the High Court of Admiralty. These resolutions were agreed to, and ordered to be reported to the House.[h] At this stage, Sir Jonah petitioned for an enquiry at the bar, and that he might be allowed counsel for his defence.[i] Leave to be heard by counsel was given, and Mr. Denman addressed the House in that capacity.[j] It was urged by counsel, that in a proceeding for the removal of a judge under the statute, the House ought to adopt as the foundation of their own judicial proceedings nothing but proof of guilt, given according to the strict rules of legal evidence. That the House ought not to be bound by any previous enquiry, conducted by a select committee of its own members, but should not proceed by address except after the fullest previous investigation into the case by the House itself. In reply, it was argued that the House, being free to choose its course of procedure against the delinquent judge, had, out of compassion for his age and infirmities, preferred to proceed by an address, to instituting an impeachment, or sending him to a court of justice for trial; the punishment consequent upon an address being lighter than that which would follow upon either of the other courses. Finally, the House refused to take additional evidence at the bar, on the ground that so strong a case against the Judge had been already made out, on sworn testimony before the Commissioners, and after a searching investigation before a committee—evidence, moreover, of a documentary description, founded upon admissions by Sir Jonah himself—that there was no necessity for further testimony. This decision, however, was much questioned by some learned members, and particularly by Sir Charles Wetherell (an ex-Attorney-General), who said, although he required nothing to convince him of Sir Jonah's guilt, and was ready to make allowance for the special circumstances of the case, yet, 'looking at the question in a constitutional point of view, he could not but think that an address for the removal of a judge ought to be passed upon the hearing of evidence at the bar.'[k] This view was entertained by the Judge himself, who petitioned the House for such an investigation, prior to the passing of an address.[l]

Nevertheless, at the close of the debate, on May 22, the series of resolutions were agreed to by the House, without further enquiry, and a committee appointed to draft an address to the crown thereupon. The address, which recapitulated the acts of malversation of which Sir Jonah Barrington had been guilty, and declared that it

[h] Mirror of Parlt. 1830, pp. 1572–1576.
[i] *Ibid.* p. 1702.
[j] *Ibid.* pp. 1863, 1897.
[k] *Ibid.* p. 1904.
[l] *Ibid.* p. 1960.

would be unfit, and of bad example, that he should continue to hold office as a judge, was reported, agreed to, and ordered to be communicated to the Lords for their concurrence.[m]

The House of Lords applied, by message, to the Commons for copies of all the documents upon which the address was founded, including the report of the select committee on Sir Jonah Barrington's case. All these papers were communicated to their lordships.[n] At this stage, Sir Jonah petitioned the House of Lords, asseverating his innocence of the charges made against him, protesting against the unconstitutionality of the course adopted by the House of Commons in passing an address to the crown for his removal from office, under a penal statute, without 'public enquiry and investigation at the bar,' and praying that their lordships would grant him leave to be heard by counsel, and to produce evidence at their bar in his own defence. Permission was granted accordingly.[o] The enquiry then proceeded in due form, the Attorney-General being ordered to attend, with the necessary witnesses on both sides. The case against the judge was opened by the Attorney and Solicitor-Generals at the bar of the House, in presence of Sir Jonah Barrington and his counsel. The defence and cross-examinations were conducted in part by Sir Jonah and in part by his counsel. After the witnesses for the prosecution had been examined, the Judge's counsel spoke on his behalf, and the Attorney-General in reply. The evidence was then ordered to be printed.[p] Afterwards, the address was fully considered and agreed to, and the House of Commons acquainted therewith.[q] Certain members were deputed by the two Houses to present the address, and his majesty was pleased to reply to the same as follows: 'I cannot but regret the circumstances which have led to this address. I will give directions that Sir Jonah Barrington be removed from the office which he holds of Judge of the High Court of Admiralty in Ireland.'[r] Thus after a protracted investigation, extending over three sessions of Parliament, the proceedings against Judge Barrington were brought to a successful close.

Case of Baron Smith.

The next case of this description which engaged the attention of Parliament was that of Sir William Smith, one of the barons of the Court of Exchequer, in Ireland, in 1834, the particulars of which have been described in a previous chapter.[s] The point established upon this

[m] Mirror of Parlt. 1830, pp. 1905, 1956, 1959.

[n] Lords' Journals, vol. lxii. pp. 162, 166, 583, 597.

[o] *Ibid.* p. 599.

[p] *Ibid.* pp. 602, 716, 873, 879. 901.

[q] *Ibid.* p. 908.

[r] Lords' and Commons' Journals, July 22, 1830.

[s] *Ante*, vol. i. p. 358.

occasion was that the House will not sanction the nomination of a select committee to enquire into the conduct of a judge, unless a *primâ facie* case—sufficient, if substantiated to justify his removal from the bench, pursuant to an address to the crown under the statute—is made out by the mover for the appointment of such committee.[t]

Case of Lord Abinger.

On February 21, 1843, Mr. Thomas Duncombe called attention in the House of Commons to certain objectionable expressions in the charges of Lord Abinger, Chief Baron of the Court of Exchequer, and alleged that his lordship's judicial conduct had been partial, unconstitutional, and oppressive; also, that he had made use of *ultra* political and party language on the bench. He then moved to resolve, 'that petitions having been presented to this House, complaining of Lord Chief Baron Abinger, when presiding as judge upon the execution of the late special commission, executed in the counties of Chester and Lancaster, this House do summon witnesses to the bar for the purpose of ascertaining the language used by the said Judge in charging the grand juries, and in summing up the cases to the petty juries who were empannelled under such special commissions, and also in passing sentences upon prisoners convicted under the same commission.'[u] The Attorney-General (Sir F. Pollock) resisted this motion, and defended the conduct of the Judge. He 'did not deny the proper vocation of the House of Commons for such enquiries in general,' but considered the present complaint to be wholly unsubstantiated.[v] It is in fact an admitted principle that 'no government should support a motion for an enquiry into the conduct of a judge, unless they have first made an investigation, and are prepared to say that they think it a fit case to be followed up by an address for his dismissal.'[w]

In reference to the allegation that Lord Abinger had spoken from the bench in terms that were more appropriate to a politician than to a judge, it was allowed that, according to ancient usage and the requirements of his office, it sometimes became the duty of a judge to refer to political affairs;[x] but Lord John Russell objected that Lord Abinger had 'spoken both as a politician and a lawyer,' when he should have spoken only as the judge. Nevertheless, 'he regarded the independence of the judges to be so sacred, that nothing

[t] Mirror of Parlt. 1834, p. 304; and see Hans. Deb. vol. clxxxii. p. 1636.

[u] Hans. Deb. vol. lxvi. pp. 1037-1068.

[v] *Ibid.* p. 1088.

[w] Sir Jas. Scarlett, Mirror of Parlt. 1834, p. 136; the Chanc. of the Exchcq. (Lord Althorp), *ibid.* p. 138; Mr. Wortley, Hans. Deb. vol. lxvi. p. 1102.

[x] Hans. Deb. vol. lxvi. pp. 1071, 1100.

but the most imperious necessity should induce the House to adopt a course that might tend to weaken their standing or endanger their authority.'[y] Sir James Graham 'did not object to questions of this nature being asked in the House,' but yet he considered it was 'due to the cause of justice itself to defend the judges of the land, unless we shall be satisfied that their conduct has been corrupt, and their motives dishonest.' He further declared that—except in Baron Smith's case (above mentioned), wherein the House retraced its steps—there had been no instance of the House of Commons instituting an enquiry with a view to discover evidence, but that it had been the invariable practice for distinct charges and specific allegations to be made, with a proffer of evidence in support of the same, before the House was called upon to commence proceedings of this description.[z] Mr. Duncombe's motion was then negatived by a large majority.[a]

Case of Sir Fitzroy Kelly.

On February 12, 1867, Earl Russell presented a petition to the House of Lords from a Mr. Wason, complaining of certain conduct of Sir Fitzroy Kelly, which, it was alleged, rendered him unfit for the office to which he had been recently appointed, of Lord Chief Baron of the Exchequer, and praying for an enquiry into the same, in order that, if the charge should be proven, an address to the crown for the removal of the said judge might be passed by both Houses of Parliament. Earl Russell stated that he did not concur in the prayer of the petition (which related to events which had taken place thirty-two years previously), but that he had felt it to be his duty to present it, rather than refuse Mr. Wason an opportunity of obtaining a constitutional remedy in a matter of great public importance. He added, that he had given a copy of the petition beforehand to the Lord Chancellor, for the information of the Lord Chief Baron, so as to enable him, on the presentation of the petition, to rebut the charges therein contained. A debate then followed, wherein the conduct of the judge upon the occasion in question was completely vindicated by the Lord Chancellor and other peers. Earl Russell acknowledged that all the charges preferred had been satisfactorily answered, and, with the unanimous consent of the House, he withdrew the petition.[b]

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[y] Hans. Deb. vol. lxvi. p. 1124.

[z] *Ibid.* pp. 1129, 1130.

[a] *Ibid.* p. 1140.

[b] Hans. Deb. vol. clxxxv. pp. 257–273.—This case gave rise to an action in the Court of Queen's Bench by Mr. Wason against Mr. Walter, the proprietor of the *Times*, to recover damages for an alleged libel contained in a report of the debate in the House of Lords on the presentation of Mr. Wason's petition, and in leading articles commenting on that debate. But the court, upon two occasions, in 1867 and 1868, decided that 'a faithful and *bonâ fide* report of a debate in Parliament is a privileged publication, and cannot be made the subject of an action for libel on account of statements contained

From an examination of the foregoing cases of procedure under the statute for the removal of judges of the superior courts for misconduct in office, it is not difficult to ascertain the correct mode of proceeding, in both Houses of Parliament, upon such occasions. It is true that the statute is silent with regard to the method of conducting these investigations, but the wisdom of Parliament in applying to this particular class of questions the constitutional maxims that regulate all judicial enquiries affecting the rights and liberties of the subject, has gradually evolved certain definite rules which are applicable to all cases of this description.

Procedure in Parliament for removal of judges.

1. It is evident that, while the consent of both Houses of Parliament is necessary to an address to the crown, upon which the sovereign shall be empowered to remove a judge holding office during 'good behaviour,' and while it is equally competent to either House to receive petitions complaining of the administration of justice, or of the conduct of persons holding judicial office, or even to institute preliminary enquiries, by a select committee, into such complaints; yet that a joint address under the statute ought properly to originate in the House of Commons, as being peculiarly the impeaching body, and preeminently 'the grand inquest of the high court of parliament.'[c]

2. It is also evident that the action of Parliament for the removal of a judge may originate in various ways. It may be invoked upon articles of charge presented to

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in the speeches therein reported;' also, that 'criticisms on matters of public interest, if written honestly,' &c., are equally privileged [Law Times Reports, N.S., vol. xvii. p. 386. *Ibid.* vol. xix. p. 409]. This judgment is a direct enlargement of the liberty of the subject, for hitherto the attempts to protect reports of parliamentary proceedings, when published *bonâ fide*, from the law of libel, had failed of complete success; (see May, Parl. Prac. ed. 1868, p. 85; Canada Law Journal (Montreal) vol. iv. p. 77). But the new doctrine merely rests upon judicial authority, it will need to be ratified by Parliament, as proposed in the Libel Bill submitted to but not passed by the House of Commons in 1867–8; Hans. Deb. vol. cxc. p. 390; vol. cxcii. p. 604; vol. cxciii. p. 471.

[c] See Judge Fox's case, *ante*, p. 730.

the House of Commons by a member in his place, recapitulating the cases of misconduct of which the judge complained of has been guilty;[d] or, after a preliminary enquiry—by a royal commission (at the instance of government,[e] or at the request of either House of Parliament),[f] or by a select committee of the House—into the judicial conduct of the individual in question;[g] or, upon a petition presented to the House from some person or persons who may have a cause of complaint against a judge;[h] provided that, while the interposition of Parliament may be sought by petition for the application of the remedy prescribed by law for a special grievance in any particular instance, no petition should be received, by either House, that otherwise reflects injuriously upon the character or conduct of the courts of justice.[i]

3. Bearing in mind the general responsibility of ministers of the crown for the due administration of justice throughout the kingdom, and the obligation which they owe to the dispensers of justice to preserve them from injurious attack or calumnious accusations, it is necessary that, before consenting to any motion for a parliamentary enquiry into the conduct of a judge, ministers should themselves have investigated the matter of complaint, with a view to determine whether they ought to oppose or facilitate the interference of Parliament on the particular occasion.[j]

4. That the House of Commons should not initiate, and ministers of the crown ought not to sanction, any attempt to institute criminative charges against anyone, unless upon some distinct and definite basis;[k] and in the

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[d] Baron M'Cleland's case, *ante*, p. 733.

[e] Chief Baron O'Grady's case, *ante*, p. 734.

[f] Sir Jonah Barrington's case, *ante*, p. 736.

[g] Judge Fox's case, *ante*, p. 730; Sir J. Barrington's case, p. 736; Baron Smith's case, *ante*, vol. i. p. 358.

[h] Judge Fox's case, *ante*, p. 731; Judge Kenrick's case, *ante*, p. 734.

[i] Case of Judge Best, Com. Journ. vol. lxxvi. p. 105; Parl. Deb. N. S., vol. iv. pp. 918, 1132; vol. v. p. 456; and see *ante*, vol. i. p. 355.

[j] Chief Baron Abinger's case, *ante*, p. 739.

[k] *Ibid.*; and see *ante*, vol. i. p. 354.

case of a judge, such charges should only be entertained upon allegations of misconduct that would be sufficient, if proved, to justify his removal from the bench.[1] But it is immaterial whether such misconduct had been the result of an improper exercise of his judicial functions, or whether it was solely attributable to him in his private capacity, provided only that it had been of a nature to unfit him for the honourable discharge of the judicial office.[m]

5. That no address for the removal of a judge ought to be adopted by either House of Parliament, except after the fullest and fairest enquiry into the matter of complaint, by the whole House, or a committee of the whole House, at the bar; notwithstanding that the same may have already undergone a thorough investigation before other tribunals.[n] The application of this principle will obviously necessitate that the person complained of shall be duly informed of the intended proceedings against him at every stage of the enquiry; that copies of all petitions, articles of complaint, and orders of the House in relation thereto, shall be promptly communicated to him; and that, upon his applying to the House for such permission, leave should be given him to appear by himself or counsel in his own defence.

6. That in requesting the crown, by an address under the statute, to remove a judge who, in the opinion of the two Houses of Parliament, is unfit to continue to discharge

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[1] Chief Baron Abinger's case, *ante*, p. 739; Chief Baron Kelly's case, *ante*, p. 740.

[m] Judge Kenrick's case, *ante*, p. 735.

[n] Judge Fox's case, *ante*, p. 731; Chief Baron O'Grady's case, *ante*, p. 734.—It is true that in Sir Jonah Barrington's case, the House of Commons refused to take further evidence at the bar, deeming that the allegations against the judge had been sufficiently established by the preliminary investigations before a royal commission and a select committee of their own. Nevertheless, the judge himself, in a petition to the House of Lords, protested against this course, as being unconstitutional, urging very forcibly that 'the evidence taken and reported by a select committee is only the basis of further enquiry, but that taken before the whole House is evidence for its decision.' (Lords' Journ. vol. lxii. p. 602.) The House of Lords, by their own action in the matter, tacitly condemned the course taken by the House of Commons. See *ante*, p. 738.

judicial functions, the acts of misconduct which have occasioned the adoption of such an address ought to be recapitulated, in order to enable the sovereign to exercise a constitutional discretion in acting upon the advice of Parliament.[o]

Judges of inferior courts, how removable.

But it is not merely judges of the superior courts who are amenable to the jurisdiction of Parliament, and liable to removal upon an address of both Houses. The statute is equally applicable to the case of 'any judge,' holding office under the tenure of 'good behaviour.' It is true that the judges of the inferior courts are under the general supervision of the Queen's Bench, where they may be proceeded against by a criminal information for corruption or gross misconduct, and they are removable for misbehaviour, either at common law or by statute. The Lord Chancellor, moreover, has jurisdiction over coroners and County Court judges, and, if he shall see fit, 'may remove for inability or misbehaviour' any of these functionaries.[p] But, independently of the power of supervision and control over judges of inferior jurisdiction, which is thus conferred upon the higher legal tribunals, it is in the discretion of Parliament to institute enquiries into the conduct of any person holding a judicial office, and if necessary to address the crown for his removal.[q]

7.

Case of W. McDermott.

Thus, on June 7, 1858, Viscount Hutchinson (Earl of Donoughmore) alleged in his place in the House of Lords, articles of charge against William McDermott, assistant barrister for the county of Kerry,[r] attributing to him corrupt conduct, perjury, and the illegal sale of an office; and with a view to an address to the crown for his removal from office. The articles were laid upon the table, and ordered to be printed, and a copy ordered to be furnished to Mr.

[o] Sir Jonah Barrington's case, *ante*, p. 737.

[p] See Broom, Constitutional Law, p. 790; Stats. 9 & 10 Vict. c. 95, sec. 18; 23 & 24 Vict. c. 116, sec. 6.

[q] See *ante*, p. 734. Mr. Kenrick's case.

[r] An assistant barrister in Ireland presides at sessions of the peace in the county for which he is appointed. The office was originally held at the pleasure of the crown, but of late years it has become so important that the tenure has been changed to that of 'good behaviour,' the incumbent being removable 'upon the address of both Houses of Parliament.' Hans. Deb. vol. cl. p. 1588; 14 & 15 Vict. c. 57. sec. 2.

McDermott. And it was resolved that the said articles be referred to a committee of the whole House, to examine witnesses, and report thereon to the House, and that Mr. McDermott have leave to appear personally and by counsel before the committee. Several witnesses were ordered to attend, and some to produce documents; and a correspondence, with representations from magistrates of Kerry, as to the improper conduct of this functionary, were presented (by command), and ordered to be printed.[s] On June 14, certain amendments to the articles of charge having been made and presented by Lord Hutchinson, in his place, the same were ordered to be laid on the table, and the amended articles to be printed, and a copy delivered to Mr. McDermott; and the previous orders for the sitting of the committee thereon were again made.[t] On the same day, a petition was received from Mr. McDermott, that the enquiry might be postponed, which was read, ordered to be printed, and to be considered next day.[u] At the time appointed the petition was considered, but no order made thereon.[v] But on June 18, the Lord Chancellor informed the House that Mr. McDermott had resigned his office, whereupon the orders for the House in committee, the attendance of witnesses, &c., were discharged.[w]

Change of judicial tenure by Parliament.

The control of Parliament over the judiciary is exercised not merely in proceedings to effect the removal of an unworthy occupant of the bench, but also in legislation to regulate or alter the tenure of persons holding judicial office.

In 1867, a remarkable case occurred, which illustrates the power of Parliament over public functionaries holding office during 'good behaviour.' Upon the introduction of a Bill 'to extend the jurisdiction, alter and amend the procedure and practice, and regulate the establishment of the Court of Admiralty in Ireland,' with a view to bring under the cognisance of this Court matters of common law in relation to which the presiding judge had no professional experience, ministers, being of opinion that the judge would be incompetent to discharge the additional duties, introduced a clause into the Bill to repeal his tenure of office, so as to permit of his removal at the pleasure of the crown. The judge protested strongly against this proceeding, and his friends took the sense of the House upon the clause. But, as it was provided in another part of the Bill that the judge should be entitled, on his retirement, to receive an annuity equal to his full salary, the proposed clause was agreed to by a large majority.[x]

[s] Hans. Deb. vol. cl. p. 1587. Lords' Journ. vol. xc. pp. 221, 237.
[t] *Ibid.* pp. 239, 244.
[u] *Ibid.* p. 243.
[v] *Ibid.* p. 251.
[w] *Ibid.* p. 261.
[x] Act 30 & 31 Vict. c. 114, secs. 4, 18. Hans. Deb. vol. clxxxix. p. 1212. In Canada, by the Act 9 Victoria, c.

The vice-warden of the Stannaries, in the Duchy of Cornwall, is another functionary having judicial powers within certain limits specially assigned to him. He exercises both a common law and an equity jurisdiction as judge of the Stannaries Court, and is appointed by the Duke of Cornwall during 'good behaviour,' and is removable by him upon a requisition, stating sufficient grounds for the same, and signed by a majority of the council, &c. of the duchy.[y] When a Bill to improve the administration of justice in this court was under the consideration of Parliament, Lord Wynford (Chief Justice Best) proposed that the judge should be removable 'upon the certificate of the Barons of the Exchequer,' addressed to the Duke of Cornwall, but the motion was negatived.[z]

Colonial Judges.

Colonial Judges.

So long as Judges of the Supreme Courts of law in the British Colonies were appointed under the authority of Imperial statutes, it was customary for them to receive their appointments during pleasure. Thus, by the Act 4 Geo. IV. c. 96, which was re-enacted by the 9 Geo. IV. c. 83, the Judges of the Supreme Courts in New South Wales and Van Dieman's Land are removable at the will of the crown. And by the Act 6 & 7 Will. IV. c. 17, sec. 5, the Judges of the Supreme Courts of Judicature in the West Indies are appointed to hold office during the pleasure of the crown.

Their tenure of office.

Nevertheless, the great constitutional principle, embodied in the Act of Settlement, that judicial office should be holden upon a permanent tenure, has been practically extended to all Colonial Judges; so far at least as to entitle them to claim protection against arbitrary or unjustifiable deprivation of office, and to forbid their removal for any cause of complaint except after a fair and impartial investigation on the part of the crown.

In 1782 an Imperial statute was passed which con-

36, the tenure of office of the judges of the district courts in Upper Canada was changed, from that of 'good behaviour' to 'during pleasure,' although, at the time, an enquiry into the conduct of the judge of the London District Court was pending. Leg. Assembly Journals, 1846, pp. 176, 220, 310.

[y] 6 & 7 Will. IV. c. 106, sec. 2.

[z] Mirror of Parlt. 1836, p. 2903.

tains the following provisions:—That from henceforth no office to be exercised in any British Colony 'shall be granted or grantable by patent for any longer term than during such time as the grantee thereof, or person appointed thereto, shall discharge the duty thereof in person, and behave well therein.' That if any person holding such office shall be wilfully absent from the colony wherein the same ought to be exercised, without a reasonable cause to be allowed by the Governor and Council of the colony, 'or shall neglect the duty of such office, or otherwise misbehave therein, it shall and may be lawful to and for such Governor and Council to amove such person' from the said office: but any person who shall think himself aggrieved by such a decision may appeal to his majesty in council.[a]

How removable.

This Act still continues in force,[b] and although it does not professedly refer to Colonial Judges, it has been repeatedly decided by the Judicial Committee of the Privy Council to extend to such functionaries. Adverting to this statute, in 1858, in the case of Robertson *v.* The Governor-General of New South Wales, the Judicial Committee determined that it 'applies only to offices held by patent, and to offices held for life or for a certain term,' and that an office held merely *durante bene placito* could not be considered as coming within the terms of the Act.[c]

From these decisions two conclusions may be drawn; firstly, that no Colonial Judges can be regarded as holding their offices 'merely' at the pleasure of the crown; and secondly, that be the nature of their tenure what it may, the statute of the 22 Geo. III. c. 75 confers upon the crown a power of amotion similar to that which

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[a] Act 22 Geo. III. c. 75. This Act was confirmed and amended by the Act 54 Geo. III. c. 61, which regulates the method of procedure by patent officers in any colony who may desire to obtain temporary leave of absence; and declares that any public officer who shall not comply with such provisions shall be deemed to have vacated his office.

[b] Hans. Deb. vol. clxxxvii. p. 1495.

[c] 11 Moore, P.C. 295.

Colonial Judges.

corporations possess over their officers, or to the proceedings in England before the Court of Queen's Bench, or the Lord Chancellor, for the removal of judges of the inferior courts for misconduct in office. Under this statute, all Colonial Judges are removable at the discretion of the crown, to be exercised by the Governor and Council of the particular colony, for any cause whatsoever that may be deemed sufficient to disqualify for the proper discharge of judicial functions, subject, however, to an appeal to the Queen in Council. But before any steps are taken to remove a judge from his office by virtue of this Act, he must be allowed an opportunity of being heard in his own defence.[d]

Judge Willis.

In proof of these assertions it may be stated that in 1846, Lord Chancellor Lyndhurst, in the Judicial Committee of the Privy Council, expressed a doubt whether a colonial governor was at liberty to remove a judge under the powers of his commission, but declared that it could be done under the statute 22 Geo. III. He added that the first case of amotion, under this statute, was that of Judge Willis, who was removed from the bench in Upper Canada by the governor and council in the year 1829; but the order of amotion being appealed from was set aside by the Privy Council because the appellant was not heard in Canada.[e] This case has not been reported, but it is evident, from contemporary authority, that the chancellor's memory was at fault in regard to the grounds of this decision, for the Privy Council rejected the appeal, and confirmed the proceedings of the Canadian government.[f] Nevertheless, whether the point that the appellant was not heard in his own defence was raised in this instance or not, the intention of the law obviously requires that there should be a full and fair investigation before removal, as will appear from the following case, which, strange to say, arose out of the removal of the same gentleman from a judicial office in New South Wales.

Upon an appeal against an order of amotion of J. W. Willis, Esq. from the office of Judge of the Supreme Court of New South Wales, made by Sir George Gipps, the governor and executive council of that colony, the Judicial Committee of the Privy Council decided, on July 8, 1846, after hearing counsel on both sides, that the governor in council had power in law to amove Mr. Willis from

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[d] Lord Chancellor Westbury. Hans. Deb. vol. clxiv. p. 1063.

[e] 5 Moore, P.C. 388.

[f] Hans. Deb. N.S. vol. xxiv. p. 551.

his office of judge, under the authority of the 22 Geo. III.; that upon the facts appearing before the governor in council, and established before their lordships, there were sufficient grounds for such removal; but that the governor and council ought to have given Mr. Willis some opportunity of being previously heard against the amotion, and that for their neglect of this, the order of removal should be reversed.[g]

Judge Montagu.

Again, in 1849, in the case of Algernon Montagu, Esq., late a puisne judge of the Supreme Court of Van Dieman's Land, against the lieutenant-governor and executive council of that colony, the Judicial Committee decided that the governor and council of a colony have power under the statute 22 Geo. III. c. 75, to remove a judge from his office for misbehaviour. And that where a judge availed himself of his judicial office, through an incident connected with the constitution of the court over which he presided, to obstruct his creditor from recovering a debt due from him, and upon investigation was found to be involved to a large extent in bill transactions and pecuniary embarrassment, there was sufficient ground to justify the Governor and Council in removing him from office. It was also held, that although there had been some irregularity in pronouncing an order for amotion, when the judge had been only called upon to show cause against an order of *suspension*, yet that as the facts justified the order of amotion, and the judge had sustained no prejudice by such irregularity, the order of amotion ought not to be reversed.[h]

Jurisdiction of Privy Council over Judges.

But it is not only upon an appeal from the decision of a Colonial Governor and Council for the removal of a judge under the statute 22 Geo. III., that the Privy Council has jurisdiction in such matters of complaint. It is competent for the crown, under the provisions of the Act 3 & 4 Will. IV. c. 41, sec. 4, to refer to the consideration of the Judicial Committee a memorial from a legislative body, in any of the colonies, complaining of the judicial conduct of a judge therein.

Chief Justice Sanderson.

Thus, in 1847, on a memorial being presented to the Queen in Council by the House of Assembly of the Island of Grenada, complaining generally of the conduct of John Sanderson, Esq. in his office of Chief Justice of that island, and enumerating various illegal and oppressive acts which he had committed during the fourteen years of his occupancy of the bench, her Majesty referred the

[g] 5 Moore, P.C. 392.

[h] 6 Moore, P.C. 489.

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memorial to the Judicial Committee. The Chief Justice also presented a memorial to the Queen, in which he complained of the reopening of bygone matters, which had been disposed of by competent authority, and protesting against the application, in the first instance, to the Privy Council, whilst there was a legitimate mode of proceeding by impeachment before the Council in Grenada, where both parties could be conveniently heard; he prayed that the Assembly's complaint against him might be referred to that tribunal. But Her Majesty referred the judge's memorial to the Judicial Committee. After hearing counsel on both sides, the Committee decided that during the fourteen years he had held office, the Chief Justice appears to have committed several intemperate and some illegal acts; but that these acts were performed many years before the complaint was made, with only one exception, that of fining two magistrates for taking depositions in the third instead of the first person, the which, though erroneous and improper, was done in the execution of what the Chief Justice thought to be his duty. Wherefore, the Committee did not think that he ought to be removed for misconduct.[1]

Chief Justice Beaumont.

In July 1868, Chief Justice Beaumont, of British Guiana, was removed from the bench, upon a memorial to the Crown from the Local Court of Policy. This memorial charged the Chief Justice with improperly and intemperately holding up the Executive Government to contempt; vexatiously taking occasion to embarrass the colonial administration; imposing harsh and vindictive punishments; using offensive, intemperate, and calumnious language; illegally exercising arbitrary power; and improperly interfering with the judicial records. The memorial was referred to the Judicial Committee of the Privy Council, and at their recommendation an Order in Council was issued for the removal of the Chief Justice from office.[1]

Jurisdiction of Parliament.

Upon several occasions, a direct appeal has been made to the Imperial Parliament by, or on behalf of, judges who had been removed from office by the local authorities in various colonies or dependencies of the realm.

Ionian judges.

In 1863, a case of this description occurred in reference to certain judges in the Ionian Islands, which were then under the protection of the British Crown. Two of the judges of the Supreme Court in those islands had been removed by the Senate, with the approbation of the Lord High Commissioner, under a clause of the constitution which made judicial offices terminable at the end of

[1] 6 Moore, P.C. 38–42. [1] Law Magazine, N.S. vol. xxv. p. 358.

every five years. Taking advantage of the fact that this provision had not been invariably enforced, the judges in question claimed that they ought to be considered as practically irremovable, and they appealed to the Secretary of State for the Colonies to be reinstated in office. But after a careful review of the circumstances, the Colonial Secretary ratified and confirmed the removal of these functionaries.[jj] The matter was then brought before Parliament, and debates arose in both Houses upon motions for the production of papers, and subsequently in the House of Lords for further papers upon the case. The latter motion was resisted by ministers, on the ground that it was a most dangerous precedent to authorise an appeal to Parliament from acts of responsible ministers in the execution of the law, &c. Nevertheless, after much debate, the motion was agreed to, and the papers produced. But no action followed in either House.[k] In the course of the debate an able despatch was quoted that had been addressed by the Colonial Secretary (Lord Glenelg) to the Lord High Commissioner (Sir Howard Douglas) in 1838, pointing out the incompatibility of an independent tenure of the judicial office with institutions so unlike those of Great Britain; and showing that the principle of irremovability, as it is established in this country, and in other free states, is qualified and protected from abuse by other principles of at least equal importance. 'Such especially are:—1st. The right of the representatives of the people to address the crown for the removal of any judge for imputed misconduct; 2nd, the right of the public at large freely to discuss the judicial administration; and 3rd, the right of a supreme tribunal, exempt from all reasonable suspicion of prejudice, to receive and to decide upon impeachments of the judges.'[l]

Ceylon judge.

In 1843, Mr. Langslow, a district judge in Ceylon, was suspended by the local government of Ceylon, and afterwards dismissed by the Colonial Secretary (Lord Stanley), for personal misconduct, not affecting his judicial character. On petition from Mr. Langslow, an address to the Queen was moved in the House of Commons, on his behalf, for a consideration of his case, and that such relief might be granted to him as might seem fit. But after debate, wherein the justice of the sentence against Mr. Langslow was substantiated, the motion was withdrawn.[m]

Since the introduction into the constitution of various British colonies of the principle of 'responsible government,' under which their political system has been assimi-

[jj] Commons Papers, 1863, vol. xxxviii. p. 141.

[k] See *ante*, vol. i. p. 417 *n.*

[l] Hans. Deb. vol. clxx. p. 284.

[m] Hans. Deb. vol. xciv. pp. 278–305. And see the case of Sir J. T. Claridge, Recorder of Prince of Wales' Island, *ante*, vol. i. p. 413.

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Removable on a Parliamentary address.

lated, as far as possible, to that of the mother country, a provision similar to that contained in the Act of Settlement, authorising the Judges of the Superior Courts of Law and Equity to be appointed during 'good behaviour,' subject to removal upon an address from both Houses of Parliament, has been established by legislative enactment in the particular colonies.

The constitutional Acts of the several Australian colonies, for example, contain clauses that the Judges of the Superior Courts therein shall be appointed during 'good behaviour;' but, nevertheless, it shall be lawful for *her Majesty* to remove any such judge upon the address of both Houses of the colonial Parliament.[n] In Canada the law is substantially the same, except that '*the Governor*' is empowered to remove a judge upon the address of both Houses of the dominion Parliament; and in case any judge so removed thinks himself aggrieved thereby, he may, within six months, appeal to her Majesty in her Privy Council, and his amotion shall not be final until determined by that authority.[o] The effect of this distinction will be hereafter explained.

Also by the Governor and Council.

Notwithstanding the facilities afforded for the removal of a judge for misconduct, under the constitutional Acts, it has been held that the imperial statute 22 Geo. III. may still be invoked by the Governor and Council of any British colony, for the amotion of a judge for any reasonable cause. But in a colony where procedure by parliamentary address against an offending judge has been established, recourse to the statute of George III. should only be had upon complaint of 'legal and official misbehaviour.'

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[n] South Australia Local Act, 1855-6, No. 2, secs. 30, 31, passed under authority of Imp. statute 13 & 14 Vict. c. 59. New South Wales: see Imp. Act, 18 & 19 Vict. c. 54, secs. 38, 39. Victoria: see Imp. Act 18 & 19 Vict. c. 55, sec. 38.

[o] Upper Canada Consol. Statutes, cap. 10, secs. 11, 12; Lower Canada Consol. Stats. cap. 81, sec. 1. By the Imp. Act 30 Vict. c. 3, sec. 99, it is provided, that 'the judges of the superior courts,' throughout the whole dominion of Canada, 'shall hold office during good behaviour, but shall be removable by the Governor-General on address of the Senate and House of Commons.'

The law officers of the crown in 1862 advised the Secretary of State for the Colonies, in reference to a case which had occurred in Queensland, Australia, as follows:—Although the judges' commissions in Queensland continue in force during 'good behaviour,' subject to a power in the crown to remove a judge upon the address of both Houses of the Legislature, 'we think that in this colony the governor and council have power to remove any judge who (in the words of the Act 22 Geo. III. c. 75) shall be wilfully absent from the colony without a reasonable cause to be allowed by the governor and council, or shall neglect the duty of his office, or otherwise misbehave therein. In so advising, it is hardly necessary for us to add, that what the statute contemplates is a case of legal and official misbehaviour and breach of duty; not any mere error of judgment or wrongheadedness, consistent with the *bonâ fide* discharge of official duty. And we should think it extremely unadvisable that this power should be exercised at all, except in some very clear and urgent case of unquestionable delinquency: the power given to the crown, upon the addresses of the legislature, being adequate, and more appropriate, for all other exigencies which may arise. . . . We do not think that any action would lie against the Governor for any act *bonâ fide* done by him under the powers of the statute aforesaid.'[p] Under certain circumstances.

From this opinion we may infer that where the remedy by parliamentary address is open, a judge should only be proceeded against under the statute 22 Geo. III., in a case analogous to that which, in England, would warrant the issue of a writ of *scire facias* to repeal the patent of a judge for misdemeanour in office.[q] If so, the institution of proceedings by a governor and council under the statute, against a delinquent judge, may be looked upon as a substitute for the more formal and less available method of applying for the repeal of a patent granted during 'good behaviour,' upon an alleged breach of the condition thereof.[r]

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[p] Quoted in Votes and Proceedings, Leg. Assembly, Victoria, Second Session, 1866, vol. i. C. No. 8.

[q] See *ante*, p. 727.

[r] There are certain technical difficulties in the way of a recourse to the prerogative judicial writ of *scire facias* in any colony of the British crown, that, without express legislation on the subject, would render it a hazardous, if not an illegal, proceeding, on the part of the Executive Government, to make use of this writ for any purpose whatsoever. (See the decision of the Privy Council in the case of The Queen *v.* Hughes, Moore, P.C. Cases, N.S. vol. iii. pp. 447–456.) An Act to facilitate the

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The question as to the applicability of this statute to colonies wherein the judges hold office during 'good behaviour,' again arose in 1864, upon a controversy between the judges of the Supreme Court in Victoria and the executive government of that colony upon this very point. The case was ultimately submitted to the decision of the imperial authorities, whose verdict confirmed the opinion above expressed, that the Imperial Act 22 Geo. III. c. 75, empowering the governor and council of a colony to remove a judge for certain specified offences, is neither repealed nor superseded by the introduction into the colonial system of the principle of irremovability implied in the tenure of 'good behaviour' for judicial appointments. Another question, as to the right of a governor and council to *suspend*, in lieu of removing, a judge under certain circumstances, was also disposed of upon this occasion; as will appear by the following narrative of the case.

Right of suspension.

Case of Judge Barry.

On January 4, 1864, Sir Redmond Barry, one of the judges of the Supreme Court in Victoria, Australia, desiring a short vacation, notified the Governor, Sir C. H. Darling, of his intended absence, but without formally asking leave. His excellency referred the matter to the Attorney-General, to know whether this was legally correct. The Attorney-General reported that judges had no right to act thus; that leave should not be 'taken' but 'allowed' by the Governor and Council, pursuant to the Colonial Act 15 Victoria, No. 10, sec. 5, which provides 'that it shall be lawful for the Lieutenant-Governor, with the advice of the Executive Council, to suspend from his office until the pleasure of her majesty be known, any judge of the Supreme Court who shall be wilfully absent from the colony without a reasonable cause to be allowed by the said Lieutenant-Governor and Executive Council.' This opinion was afterwards communicated to Judge Barry by the Attorney-General, together with a minute of council 'allowing' his intended absence.

Judge Barry then wrote to the Governor that he did not consider it necessary to obtain leave of absence before leaving the colony, since the passing of the Constitution Act[s] by which the position of the

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issue of such writs was passed in New Zealand in 1867. Local Acts 31 Vict. No. 66, sec. 9.

[s] Imp. Act 18 & 19 Vict. c. 55, schedule 1, sec. 38.

judges of the Supreme Court had been altered. Under that Act they are appointed during 'good behaviour,' and 'are removable only upon the address of both houses of the legislature.' He therefore declined to be bound by the Attorney-General's opinion, and (in a subsequent letter) denied the right of the Executive Council to call in question his judicial conduct, alleging that 'that conduct can be enquired into in the way appointed by the constitution and in no other manner.' These letters were referred by the Governor to the consideration of the Cabinet.

Direct communication with the Governor.

At this stage of the proceedings, a sharp correspondence took place between Judge Barry, the Attorney-General, and the governor, as to the right of the judges to communicate with the governor direct, notwithstanding 'the practice since the coming into force of the Constitution Act for all judicial and other officers in the public service of Victoria to communicate upon all questions affecting their official rights or responsibilities with the minister of the crown, who is charged with the duty of advising the governor in each particular case.' Ultimately Judge Barry was informed by the governor and Council that the Attorney-General was the responsible minister for the proper conduct of the legal business of government, the head of the department to which the Supreme Court is attached, and the proper medium of communication between the executive government and the judges of that court, and that all official communications from the judges respecting their rights, privileges, or duties, intended for the consideration of his excellency, or the government, must in future be addressed to that functionary. On September 29, Sir R. Barry, in the name and on the behalf of the whole judicial bench, again wrote to the governor requesting him to submit this question for the consideration of the Secretary of State for the Colonies, 'by whose determination they are willing to abide,' viz.—'whether the judges are entitled to communicate directly, in person or by letter, with the Governor of Victoria, on matters connected with their personal rights and privileges.' On April 19, 1865, the Colonial Secretary (Mr. Cardwell) replied to the effect that the judges, in common with all other inhabitants of the community, possessed the right of addressing the queen's representative on matters affecting their personal rights, but he declined to give directions as to the mode of conducting their official correspondence, upon matters which concerned their official rights and privileges, leaving it to the governor, after consulting his advisers, to determine the manner in which such communications should pass between the executive and judicial authorities of Victoria. 'But whatever be the mode of correspondence adopted, the arrangements ought to be such that the judges may feel secure that any communication they might make would reach [the governor's] hand, and would receive from the representative of the crown the attention to which it was entitled.'

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In transmitting a copy of this despatch to the judges, the governor intimated that the rule previously communicated to them, as to the mode of communicating with the government in regard to official matters, must be adhered to, but that all such communications would receive from him the attention to which they were entitled.[t]

Upon the merits of the main question at issue between the judges and the executive government, the Attorney-General of Victoria, in a letter to Governor Darling, of August 22, 1864, asserted his conviction that the judges' claims were founded upon a construction of the 38th section of the Constitution Act, and of the Act of Settlement, and the Act 1 Geo. III., which was 'clearly erroneous,' and 'has not been sanctioned by a single English constitutional or legal authority.' The true doctrine on the subject, as held by the Minister of Justice and Attorney-General, was communicated to his excellency by these functionaries in an elaborate opinion.

May be removed by governor and council.

This opinion first enquires whether the Act 15 Vict., No. 10, sec. 5, authorising the governor and council to suspend, until the queen's pleasure be known, a judge of the Supreme Court of Victoria who wilfully absents himself, without leave, is still in force, and it contends that inasmuch as it has not been expressly repealed, and is not inconsistent with the new tenure during 'good behaviour' of the judicial office, under the Constitution Act, it remains in force; together with the Imperial Acts 22 Geo. III. c. 75, and 54 Geo. III. c. 61, which, jointly, confer on the governor and council the power of suspending as well as of removing a judge.

In proof of these statements the opinion proceeds to enquire what 'misbehaviour' would constitute a legal breach of the conditions of this tenure, in language already quoted;[u] and having ascertained this, it sets forth that the office of judge is also determinable upon an address to the crown by both houses of the local parliament: that upon the presentation of such an address the estate in his office of the judge in regard to whom the address is presented, may be defeated: that the crown is not bound to act upon such an address, but if it think fit so to do, is thereby empowered to remove the judge without any further enquiry, or without any other 'cause assigned than the request of the two houses.'

Assuming, therefore, that a judge is removable either for 'misbehaviour' in office, sufficient to constitute a legal breach of the condition of his patent, or at the pleasure of Parliament, expressed by an address from both Houses, and for no other cause whatsoever, the opinion next examines whether the power of suspension, under the Act 15 Vict. No. 10, is really consistent with the tenure of 'good behaviour.' At common law the grantor of an office has the power

[t] Votes and Proceedings, Leg. Assembly, Victoria, 1864–5, B. No. 34, C. No. 2.

[u] See *ante*, p. 727.

to suspend the grantee from his duties, though not to affect his salary or emoluments. It was held by Lord Nottingham, in Slingsby's case,[v] that this power of suspension may be exercised when there is in the office an estate, not merely for life, but even of inheritance. But it can only be exercised by a power similar to that by which the office was conferred. And as judges are appointed by the crown under letters patent, they could only be suspended or deprived by a proceeding at law for an avoidance of the patent, or by some other legal action on the part of the crown.[w]

Colonial judges, however, have been placed by imperial statutes in a different position. The 22 Geo. III. c. 75, as confirmed by the 54 Geo. III. c. 61, supersedes the necessity for a *scire facias*, and gives the governor and council a power of amotion similar to that which corporations possess over their officers.[x] Wherefore, it is argued in this opinion, since the greater includes the less, this power of amotion will bring with it the power of suspension.

The opinion concludes by asserting: 1. That the altered tenure of the judges under the Constitution Act is not inconsistent with the Act 15 Vict. No. 10, sec. 5, empowering the governor and council to suspend a judge who absents himself without leave. 2. That the said section is still in force. 3, 4, and 5. That the imperial Acts 22 Geo. and 54 Geo. III., so far as they relate to judges of the supreme court, are also in force in Victoria, and empower the governor in council to suspend as well as to remove the judges.

Being agreed to by the Council, this opinion was transmitted to the judges, with an intimation that they must hereafter comply with the provisions of the Act 15 Vict. No. 10, sec. 5. Whereupon Sir R. Barry, on behalf of the bench, protested against this declaration, and deeming it unbecoming that the judges should discuss a question of law with a body having executive and political functions, expressed a desire that the governor would endeavour 'to obtain the judgment of the only tribunal competent to determine the question, namely, the Judicial Committee of the Privy Council.'[y]

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[v] 3 Swanston, 178.

[w] See *ante*, p. 728.

[x] See *ante*, p. 748.

[y] Meanwhile, the ministry introduced into, and passed through, the Assembly of Victoria, a bill to consolidate the laws relative to the Supreme Court. This bill included the particular section 5 of the Act 15 Vict. No. 10, which the judges contended had been repealed by the Constitution Act, but which the Government declared to be still in force. This led to an angry correspondence between the Chief Justice and the Attorney-General, and finally to a petition from the judges to the Legislative Council, before whom the bill was pending, protesting against the measure, as an attempt to legalise an arbitrary assumption of power. On June 22, 1865, the bill was rejected by the Legislative Council. See Votes, &c., Leg. Assembly, Victoria, 1864–5, C. No. 2; Votes, &c., Leg. Council, 1864–5, E. No. 4.

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On September 30, 1865, the Chief Justice transmitted to the Attorney-General (to be forwarded by the governor to the Colonial Secretary) a petition of the judges of the Supreme Court to the queen, praying that the question—whether, as regards said judges, the Imperial Act 22 Geo. III., and the Colonial Act 15 Vict. aforesaid, are still in force—might be referred to the Judicial Committee of the Privy Council for hearing and consideration.

This petition claimed that the said statutes were—by the Constitution Act, which declared that the judges should hold office during good behaviour, and be removable upon a parliamentary address—'absolutely repealed—if not in express terms, as being laws contrary to that statute—at least by necessary intendment, as being inconsistent therewith and repugnant thereto.' And it alleged that the executive, acting on an opinion from their legal advisers, asserted the contrary, and had announced their intention of enforcing them against the petitioners, to the manifest detriment of their judicial independence, and the proper administration of justice in the colony.

The petition, with explanatory documents annexed, was referred by the Governor to the Attorney-General, to be reported upon before transmission to the Colonial Secretary.

On Oct. 23, 1865, the report of the law advisers of the crown on this petition was forwarded to the governor. It recapitulated the arguments contained in their opinion above mentioned. It also showed that in the course of the discussion the judges had altered their ground, for whereas they had 'at first contended that they were responsible to the governor, moved by the two Houses of Parliament, and to no other body, and that they were removable only upon an address of both Houses,' they had afterwards admitted 'that they were removable not only upon an address, but also upon proof of misbehaviour in office, before a court of competent jurisdiction.' If so, it was contended there was no such inconsistency or repugnancy between the several Acts alleged to be in force as the judges had asserted. Furthermore, it was urged that 'the judicial independence of the judges of the Supreme Court is not in any degree affected by this question,' for that such independence is as highly prized by the people of Victoria as it is in England. Nevertheless, if it were proper to make mention of political considerations to influence the opinions of the Judicial Committee on a purely legal question, it could be 'demonstrated by various proceedings of the Judges of the Supreme Court in this, as well as in the neighbouring Australian colonies,' that it is expedient 'to retain a certain degree of authority over judges of all ranks in matters not connected with the exercise of judicial functions.'

On October 24 the Governor transmitted to the Colonial Secretary the judges' petition, the Attorney-General's report thereon, and the

documents annexed thereunto. While refraining from expressing any opinion upon a purely legal question, his excellency intimated his desire that it should be settled by competent authority.

On January 25, 1866, the Secretary of State for the Colonies (Mr. Cardwell), in a despatch to Governor Darling, declared that he considered it "by no means undesirable that important constitutional questions should be habitually referred by colonial governments, or legislatures, for the judgment of the Judicial Committee;' but that in the present instance the Lord President of the Council, after consulting precedents, had decided that on grounds both of previous practice and of principle, it was inexpedient to comply with the judges' application. 'The question raised by the judges is as yet entirely of an abstract and theoretical character,' 'and it appears to the Lord President to be highly inconvenient to call upon a court of appeal—such as the Judicial Committee of the Privy Council is, in relation to the colonies—to decide abstract questions of law, so that whenever a case actually arises for the application of the law it should be pre-determined.'

But prior to the refusal of the President of the Council to entertain the judges' petition, the Colonial Secretary had referred the papers to the law officers of the crown (Sir Roundell Palmer and Sir R. P. Collier), by whom, on January 10, 1866, he was advised 'that, notwithstanding the passing of the Constitution Act (18 and 19 Vict. c. 55), the governor and council can still 'amove' judges under the Imperial Statute 22 Geo. III. c. 75, and that the governor and council probably retain the power of suspending judges under the local Act.' The Colonial Secretary forwarded an extract from this report, with a copy of a report to the same effect, in November 1862, by the then law officers (Sir Wm. Atherton and Sir R. Palmer), on a similar question which had been raised in the colony of Queensland.

Power of suspension.

The first-named opinion, after confirming that of their predecessors in the Queensland case, that the authority conferred upon the governor and council to 'amove' colonial judges, by the Act 22 Geo. III., remains in force, adds—'We also think it is the better opinion, that they can still suspend judges under the Local Act 15 Vict. No. 10, sec. 5, the power of suspension, for the causes therein mentioned, being not inconsistent with the tenure of the office during good behaviour, especially if the office is (as we consider it to be) held subject to the power of amotion, for the like causes, given by the 22 Geo. III. c. 75.'

The opinion of the law officers of the crown in the Queensland case enters more fully into the question before them, which was strikingly analogous to the Victoria case, except that there was no Local Act in Queensland to authorise the *suspension* of a judge.

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After defining the circumstances under which the power of the crown to remove judges and others holding office during 'good behaviour' might be exercised, under the Imperial Act 22 Geo. III., and pointing out that, on general principles, 'except so far as it may be controlled by express legislation, there is no constitutional reason why, in a colony where parliamentary or responsible government is established,' that power might not continue to be exercised, together with the power of removal upon a parliamentary address, the opinion proceeds to consider the right of suspension. Inasmuch as there was no Local Act authorising the same, the crown law officers 'do not think that the governor has any power, with or without the advice of the executive council, to *suspend* a judge. An order of suspension (as distinguished from amotion) would be, in our opinion, a mere nullity; though, in order to determine that question, an appeal to her Majesty in Council, if presented, would doubtless be entertained. And we think that an action would lie against the governor if he were to attempt to enforce any such order of suspension.'

On March 20, 1866, the Attorney-General of Victoria forwarded to the Chief Justice, for the information of the judges of the Supreme Court, the aforesaid despatch from the Colonial Secretary, with its enclosures, in reference to their petition to the Queen in Council. In reply, the Chief Justice expressed the regret entertained by the judges that her majesty had not been advised to submit their case to the decision of the Judicial Committee.[z]

Suspension of judges.

While the English law officers of the crown, in the preceding case, concur in denying the right of a governor and council without express statutable authority to *suspend* a judge holding office during 'good behaviour,' there can be no question that such a power may be lawfully exercised if conferred upon the governor and council by a local enactment.[a] But a judicial officer so suspended would have a right of appeal to the Queen in Council.

Thus, upon the suspension, in 1853, of the Hon. H. Cloete, from the office of Recorder of the District Court of Natal, by the governor and council, under the authority of an ordinance of the

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[z] For the Correspondence, Petitions, and other papers, in this case of the Victoria Judges, from January 4, 1864, to March 27, 1866, see Votes and Proceedings, Leg. Assembly, Victoria, 1864-5, B. No. 34, C. No. 2: and Second Sess. 1866, vol. i. C. No. 8.

[a] The provisions of the Victoria Act 15 Vict. No. 10, sec. 5, to this effect have been enacted in other colonies in Australia.

Cape of Good Hope colony, for misconduct in office, the Judicial Committee of the Privy Council, on appeal, decided that the order of suspension was unfounded and frivolous, and directed it to be rescinded.[b]

Their removal upon an address.

It now remains to consider the circumstances under which the two Houses of Parliament in a British colony may approach the crown with an address for the removal of a judge holding office under a parliamentary tenure, and the proceedings necessary to give validity and effect to any such address.

Case of Judge Boothby.

The first occasion wherein the crown was addressed by the two Houses of Parliament of a British colony for the removal of a judge holding office during 'good behaviour,' was in the year 1861, in the case of Mr. Justice Boothby, a puisne judge of the Supreme Court of South Australia. Mr. Boothby had given offence to the Colonial legislature by calling in question the legality and constitutionality of certain of their proceedings, and especially of an Act agreed to by both Houses, and sanctioned by the governor. Whereupon the legislative council passed an address to the queen that her majesty would be graciously pleased to exercise the power reserved to her by the Constitution Act, and remove Mr. Boothby from his judicial office. The House passed a separate address to the queen to the same effect, adding that 'in consequence of the position assumed by Mr. Justice Boothby, public confidence in his administration of the laws of this province is destroyed.' But no reasons were given, or grounds of complaint specified, by either House.

In communicating the aforesaid addresses to the Colonial Secretary, the Governor of South Australia (Sir R. G. MacDonnell) stated that he thought 'both branches of the legislature had pursued a dignified course in finally determining not to give any reasons for the request which they urge, as it is not to be presumed that they would move in such a matter lightly, or till after such repeated provocation as would justify them in urging on the sovereign the request' for Mr. Justice Boothby's removal. At the same time, his excellency proceeded to enumerate, for the information of the Colonial Secretary, various particulars in the conduct of the judge which he deemed an ample justification of the course taken by the two chambers. He also transmitted communications from the judge, in his own defence, in reply to a letter addressed to him by his excellency's command, informing him of the addresses that had

[b] 8 Moore, P.C. 484.

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been passed for his removal, specifying the several proceedings of the judge which, in his excellency's opinion, had 'apparently influenced the Parliament in adopting those addresses,' and offering the judge 'six months leave of absence on full pay' to enable him to visit England to vindicate his character and conduct before the imperial authorities:—he having declined to attend a select committee of the legislative council, appointed to examine his 'recent judicial decisions and conduct.' [c]

On the receipt of these addresses, the Colonial Secretary (the Duke of Newcastle) took the opinion of the law officers of the crown (Sir William Atherton and Sir Roundell Palmer) on the subject. In conformity with their advice, he informed the governor that her majesty's government considered 'that a colonial judge is not only at liberty but is bound to entertain the question whether a colonial law, material to the decision of the question before him, is or is not valid;' that Judge Boothby was right in the main, though not in every instance, when he questioned the validity of certain Acts of the South Australian Legislature; and that inasmuch as this legislature, when it passed the addresses for the judge's removal was not, strictly speaking, legally constituted—although the Imperial Parliament had since remedied the defect—it had not been deemed expedient to advise the crown to remove Judge Boothby, pursuant to the said addresses. With regard to other matters wherein the judge had given offence to the legislative chambers, so long as it was unadvisable to give effect to the addresses for his removal from the bench, her majesty's government considered that it would be unbecoming 'to express any mere unauthoritative opinion respecting the official conduct of a judge.'

Furthermore, added the Secretary, 'I hold the practical independence of the superior courts of a colony to be, with the appointment of the governor, the right of exercising a veto upon colonial enactments, and the right of appeal to her Majesty in Council among the links which bind together the colonial empire of Great Britain. It is of vital importance not only to the colonies, but to all those who have dealings with them of whatever kind, and to the imperial government itself, that these courts should exercise their functions in entire independence not only of the local executive, but of the popular feelings which are from time to time reflected in the legislature, or of any political party which may happen to be in the ascendant. And I consider that the principal guarantee of this independence is to be found in the assurance that a judge, once appointed, will not be displaced without the reasonable concurrence of an authority wholly removed from all local or temporary influences. By the existing law of South Australia I consider such an

[c] Commons Papers, 1862, vol. xxxvii. pp. 172-177.

authority to be entrusted very properly to her majesty, acting on the advice of her ministers in Great Britain, and I hold that in dismissing a judge in compliance with addresses from a local legislature, and in conformity with that law, the queen is not performing a mere ministerial act, but adopting a grave responsibility, which her majesty cannot be advised to incur without satisfactory evidence that the dismissal is proper.'

The Colonial Secretary was prepared to admit that a judge might be properly removed on a parliamentary address, if satisfactory proof were adduced 'that owing to his perversity, or habitual disregard of judicial propriety, the administration of justice might be practically obstructed by his continuance in office:' and this might be shown 'by his inflexible enforcement of opinions which were inconsistent with the beneficial performance of his duties,' and which might be regarded by competent authority as 'incorrect in point of law.' In conclusion, his grace observed, that 'while expressing no opinion respecting Mr. Boothby's conduct, I have thought it due both to him and the colony to state thus explicitly the principles by which I should be guided in dealing with any charges which might hereafter be brought against a colonial judge, on the authority of a colonial legislature.' (Signed) Newcastle, April 24, 1862. In conclusion, it may be remarked that the crown law officers made no objection to the circumstance of there being separate addresses from the two Houses, in place of one joint address. Nor did they deem it to be irregular that the addresses omitted to state any specific charges, 'provided that the crown is by any means satisfied of the reasons on which the address is founded.'[d]

In June 1866 both Houses of the South Australian legislature again addressed the crown for the removal of Mr. Justice Boothby. Inasmuch as the addresses were accompanied by despatches, wherein statements were made that required judicial investigation, her majesty was advised to refer the matter to the Judicial Committee of the Privy Council. These papers have not yet been published;[e] but it appears that the address was complied with, and that the judge was formally removed from his office on July 29, 1867. He contemplated a further appeal to the Privy Council, but before he could take any steps to that end, he died in Adelaide, South Australia, on June 21, 1868.[f]

And here it may be observed, that while, as will appear from cases cited in this chapter, an appeal lies to

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[d] Corresp. relative to Mr. Justice Boothby, Commons Papers, 1862, vol. xxxvii. pp. 180-184.

[e] Hans. Deb. vol. clxxxvii. p. 1494.

[f] Law Times, Sept. 10, 1868, p. 372.

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the Queen in Council, upon the removal of a judge in any colony by the governor thereof, whether it be in consequence of a proceeding under the Act 22 Geo. III., or, in compliance with a parliamentary address,—there is no appeal to the Privy Council, or to any other tribunal, where the removal is effected by the direct authority of the queen. Nevertheless, Earl Grey, when Secretary of State for the Colonies, regarded the principle of judicial independence as of such vital importance, that he would never recommend to her majesty to remove a colonial judge, without referring the questions connected with the conduct of the judge to the judicial committee of the Privy Council.[g]

Jurisdiction of the Privy Council.

Neglect of proper formalities in Judge Boothby's case.

An examination of the proceedings in the South Australian Legislature in the case of Mr. Justice Boothby will show that none of the formalities which have invariably attended the conduct of such investigations by the Houses of Lords and Commons were observed upon this occasion. In both chambers, select committees were appointed to enquire into certain judicial decisions of the judge, and his honour was summoned to attend and give evidence before the same. While he appeared as a witness before the House of Assembly committee, he thought proper to decline to attend upon that of the Legislative Council. But after the reports of these committees were drafted, no opportunity was afforded to the judge, by either House, to rebut the criminatory charges therein contained, or to appear by himself or counsel at the bar in his own defence. There was no further enquiry instituted by either House, and the addresses were severally passed without embodying the specific charges of misconduct which had induced the Houses to agree to them.[h] These grave departures from constitutional practice can only be accounted for or excused by the want of ade-

[g] Hans. Deb. vol. clxx. p. 300.

[h] See the Proceedings of the Parliament of South Australia, 1861, 3 vols.

quate information as to the proper course of procedure in Parliament against judges—a want which the present work attempts, for the first time, to supply—and by the fact that the highest constitutional authorities seem to have overlooked the cases that have actually arisen in England, of a like nature, under the Imperial Statutes.[i]

It is to be regretted, moreover, that the English law officers of the crown should have acquiesced in the omission of the particular grounds of complaint against Judge Boothby, in the addresses for his removal, 'provided that the crown was, by any means, satisfied of the reasons on which the addresses were founded.' Such an omission was undoubtedly irregular and unparliamentary, and might serve as a precedent hereafter for a more serious departure from substantial justice. In one of the few States of the American Republic wherein the British tenure of judicial office is still retained, the governor refused to comply with an address of the two branches of the legislature for the removal of a judge, because no reasons for the same had been assigned in the address, while in every former application of the kind to the executive, 'full reasons' for removal had been given.[j] If hereafter it should unhappily be necessary for the

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[i] Thus, in Lord Brougham's Treatise on the British Constitution (2nd edit. 1861) it is said, in reference to the removal of judges upon a joint address of the two Houses of Parliament, 'there is no instance of this ever having been done' (p. 357). And the law officers of the crown, in a legal opinion, dated April 12, 1862, remark that 'no instance of the removal of an English judge by the crown, on the address of both Houses of Parliament, has occurred since the passing of the 1 Geo. III. c. 23:' quite overlooking the case of Sir Jonah Barrington, not to mention the several other cases cited in this chapter, wherein the procedure upon an address was resorted to. Commons Papers, 1862, vol. xxxvii. p. 183.

[j] Acts and Resolves of the State of Massachusetts, 1856, pp. 325–335. And see Story, Constitution of the United States, secs. 1600–1632, as to the importance of maintaining the independence of the judges without encroachment. The American Law Review, for October 1868 (p. 85), in an article on certain flagrant acts of judicial misconduct in the State of New York, pleads for a return to a judiciary appointed by the executive, and holding office during good behaviour, as the only means of rescuing the nation from the disgrace entailed by the proceedings of a judiciary elected by popular vote, and for a limited period.

legislative chambers in any British colony to assume the responsibility of addressing the crown to remove an unworthy occupant of the judicial bench, it may be hoped that the proceedings will be conducted with the solemnity, impartiality, and respect for constitutional rights which ought always to attend upon the exercise of such important functions by a legislative body.

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THE END.

LONDON: PRINTED BY
SPOTTISWOODE AND CO., NEW-STREET SQUARE
AND PARLIAMENT STREET

00143182

Digitized with financial assistance from the
Government of Maharashtra
on 15 June, 2016